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THE LORD WARDENS OF THE MARCHES OF ENGLAND AND SCOTLAND

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THE LORD WARDENS OF THE MARCHES OF ENGLAND AND SCOTLAND

BEING

A BRIEF HISTORY OF THE MARCHES, THE LAWS OF MARCH, AND THE MARCHMEN TOGETHER WITH SOME ACCOUNT OF THE ANCIENT FEUD BETWEEN ENGLAND AND SCOTLAND.

BY

HOWARD PEASE, M.A., F.S.A.

AUTHOR OF 'BORDERLAND STUDIES'
'TALES OF NORTHUMBRIA'
ETC., ETC.

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'For alsmekil as this Nobill Ile, callit Gret Britanee, can nocht be kepit and maintenit bettir in Welth and Prosperite than such Thingis to be practizit and concludit betweyn the Kingis of boith the Realmes of Scotland and Ingland, quharby that and thare subjectis micht be assoverit to lefe in Peax, Luf and Tendines to grow and incres ymangis thame, it hath be Aggreit, Accordit and Concludit that, considerit the long continewyt Trublis, Discentions and Debattis betwen the boith Realmes, with gret and mortell Werre that haith followit thar uppon, for the appeasing and setting apart of the samyn, a newar and a most especiale Weye is to be fundin and had than only the trust of the Trew and Abstinence of Werre that is nowe or ony uthir Trew that couth be divisit betuix boith the Parties.'

Confirmatio Alligantiarum et Treugarum per Regem Scotorum. 26. X. 1474. (Rymer, *Foedera.*)

WITHDRAWN
FROM THE
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TO THE

MASTER AND FELLOWS OF BALLIOL COLLEGE, OXFORD

'THE MOST KINDLY NURSE' OF MANY BORDERERS

SCOTTISH AS WELL AS ENGLISH

Posuit fines tuos pacem. Ps. xlviii.

No Warden keeps the Marches,
From Tynedale to the Tweed,
Broad winds the road to Scotland
Beside the streams of Rede.

Here, where some flaming roof-tree
Leaped red-tongued to the sky,
About the grass-grown ruins,
The nesting stock-doves fly.

Here, where spear-driven cattle
Splashed deep to taste the cool,
Only the quick-winged dipper
Startles the quiet pool.

Unwatched, your flocks, O shepherd,
Feed safe o'er many a field,
With red-brown bracken rusted
Hangs Cheviot's dinted shield.

Plough, husbandman, long furrows,
Fling, sower, undismayed,
In groves of birch and alder
Tweed sheathes his steel-bright blade.

MARNA PEASE.

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PREFACE

It may be claimed for this Book that it was written on the only true principle, viz. to please the author, and furthermore, to enable him to resolve certain doubts. He well remembers how difficult, for example —to cite only three instances—he found it in the past to discover precisely what a 'Land Serjeant' was, and what the true meaning of 'Double and Sawfey' might be, or exactly what 'to baugle' meant.

'Sawfey' has hitherto been defined as 'blackmail'[1] levied by Border raiders, or 'protection money,' but in reality the word means a *fine or punishment*, and is part of the code of the Border Laws. Sir Robert Bowes (who had been long time a Warden and 'one of the most expert Borderers within memory,' so Sir William Bowes—Treasurer of Berwick—styles him in writing to Burleigh in 1598), discusses the term fully

[1] By an enactment of the 43rd Eliz., it was ordered—without, however, impeaching the jurisdiction of the Lord Wardens—that the paying 'a certain rate of money, corn, cattle, or other consideration, commonly there called by the name of blackmail, unto divers and sundry inhabitants upon or near the Border *was felony without benefit of clergy.*'

Blackmail is said to signify payment in cattle; whitemail in silver money.

in his report[1] on the Borders in 1551, and though he has infinite difficulty in spelling it (flass, sale, falsse being varieties), he sets forth the meaning clearly enough.

The duties again of a 'Land Serjeant' become clear when you read Thomas Carleton's Letters[2] to Lord Burleigh in 1597, and the true signification of 'baugle' or 'bauchle' in a memorandum on the 'manner of holding days of Truce' in Sir R. Bowes's *Informacions*.

The Border Papers, so ably edited by the late Mr. Joseph Bain, are a true search-light for students of Border History, for you get there the personal equation of the Lord Wardens and the inhabitants of the Marches.

Therein you may gather incidentally the difficulties of March administration when you read Sir John Forster's letter to Walsingham, where, after mentioning the death of Sir Thomas Ker in 1586—who had been his opposite Warden—he concludes with an expression of sorrow—'*that he had not beine hanged.*' You can also read of the many accusations brought against Forster himself, and of his final dismissal from his Wardenship.

There are of course innumerable books — stout

[1] See *Reprints*, vol. iv. (Richardson, Newcastle).
[2] See *Calendar of Border Papers*, vol. ii. p. 447.

quartos as well as ephemeral crown octavos—about the Border, but there is none, so far as the present writer knows, that sets forth the romantic story of 'the Laws of the Marches,' the lawgivers, and the lawless on its social or administrative side, which is the task the writer has essayed. Bishop Nicholson's *Leges Marchiarum* is the foundation-stone of the building which has been built up thereafter out of the *Border Minstrelsy* of Sir Walter Scott, Burn and Nicholson's *History of Westmorland and Cumberland*, Ridpath's *History*, Armstrong's *History of Liddesdale and the Debateable Land*, Andrew Lang's *History of Scotland*, Rymer's *Foedera*, and, most important of all, the *Border Papers* above mentioned.

Dr. Hodgkin's excellent Creightonian Lecture on the 'Wardens of the Northern Marches' (Murray, 1908) had a list of the various Wardens which the present writer in 'conveying' has somewhat amplified. He has further—with Dr. Hodgkin's kind permission—made use of a like title for this book.

He must also express his gratitude to Dr. Neilson of Glasgow for discovering to him the meaning of that strange term the *Manus de Wardshiell*, mentioned in the first of the *Leges Marchiarum*, that had long been an enigma.

Finally, his warm thanks are due to Mr. C. R. L. Fletcher of Oxford for reading through the MS.,

and for much valued criticism and advice, and to the Rev. H. A. Wilson of Magdalen College for sundry suggestions and interesting notes, and to Mr. A. L. Smith of Balliol College for various assistance and encouragement.

. . . . . .

As you read in the Border Laws you will note the gradual growth of civilisation—in the kings at least, if not the people[1]—as shown by the various sections of the later indentures, dealing with swifter methods of bringing notorious thieves and murderers to justice, also with making the meetings of the Lord Wardens more frequent and efficacious, till finally in 1596—seven years before the 'Marches of England against Scotland' and of 'Scotland against England' became King James's 'Middle Shires'—you will find

[1] Indeed the last state of the Borders was worse than the first, for even so late as 1587, when there was peace between the two kingdoms, the lawlessness of the Borderland can be shown at a glance by giving the 'breviate of the attempts of England committed upon the West Marches by the West Borders of Liddesdale and fouled (viz., found true), by the Commissioners of Berwick for lack of appearance, with the breviate of the Liddesdale Bills, ouled of the inhabitants of the West Marches by the Commissioners at Berwick: with the names of such persons noted in the Marches, as my Lord Scroope had ready to deliver, together with the breviate of the bills of England, fouled at Berwick upon the West Marches of Scotland, by the Commissioners, according to the indenture.' Add to the above the counter abstract of the West Marches of Scotland fouled against the West Marches of England by the said Commissioners.

The sum-total of all these various bills for slaughter, wounding, theft, and burnings amounted to £9700 for English claims, and to £41,600 for the Scottish, leaving thus a surplus of English wrongdoing to the tune of £31,900.

even the spiritual needs of the inhabitants taken thought of.

Thus, Item 1 of the last of the Border Laws runs as follows:—'That the Princes be most humbly and earnestly intreated to cause God's ministers of the Word to be planted in every Border Church, to inform the Lawless People of their Duty, and to watch over their manners, and that the Principal Inhabitants of each Parish shall put in surety to their Prince for Due Reverence to be used towards their Pastors in their Offices, and the safety of their Persons; and that to this effect, order may be timely taken for reparation of the Decayed Churches within the Bounds.'

We may conclude our Preface with a quaint illustration of the usual fate of the Borderer in the old days, who rarely died—'like a cow'—in his bed.

As we commented once upon the excess of the names of women over those of men on the headstones in the Churchyard at Bewcastle, the Sexton responded drily, 'What happened the men? Wey, the men were a' hangit at *weary* Carlisle!'

Otterburn Tower,
Northumberland.

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those of Sir James Douglas, the beauty of Helen with the fascination of Mary Queen of Scots, for whom so many Borderers on either side fought in vain, in whose cause the Earl of Northumberland lost his life and the Earl of Westmoreland his estates.

When the Laird of Buccleugh had so gallantly rescued 'Kinmont Will' from Carlisle Castle and was confronted with the wrath of Queen Elizabeth, he won the great Queen's admiration by his dauntless words, 'What is there that a brave man will not attempt?'

And we may add the testimony of Sir Philip Sidney to the hold the Border story retains upon the human heart, for, 'confessing his barbarousness,' he admitted that Chevy Chase moved him more than the sound of trumpet.

As the duel and the battle were waged for years about the walls of Troy between the Achaians and the Trojans, so for centuries the long contest raged upon the Borderland between the English and the Scots, 'and the earth streamed with blood.'

'Οἱ δ' ὅτε δὴ ῥ' ἐς χῶρον ἔνα ξυνιόντες ἵκοντο,
Σύν ῥ' ἔβαλον ῥινοὺς, σὺν δ' ἔγχεα καὶ μένε' ἀνδρῶν
Χαλκεοθωρήκων· ἀτὰρ ἀσπίδες ὀμφαλόεσσαι
Ἔπληντ' ἀλλήλῃσι, πολὺς δ' ὀρυμαγδὸς ὀρώρει.
Ἐνθάδ' ἅμ' οἰμωγή τε καὶ εὐχωλὴ πέλεν ἀνδρῶν,
Ὀλλύντων τε, καὶ ὀλλυμένων, ῥέε δ' αἵματι γαῖα.'

Iliad, iv. 446-451.

The Borderland, indeed, possesses a twofold magic: the one is the dowry of nature, the other that of a great artist, for the 'great Wizard' has peopled a romantic country for us with undying figures, even as Homer filled the plains of the Simois and Scamander to our delight with living heroes. The natural magic endures through the ages, for one of late[1] who has been called the 'swiftest and brightest spirit of our day' felt it to the full.

Thus, Miss Sichel writes of her friend's love for Northumberland. 'She liked nature to be a power outside her, infusing into her the joy, the peace, that she did not always possess. She never felt that power more than in Northumberland. Northumberland haunted her: she loved its stern moods, its summer richness, its Border sights, its strong romance.'

Yet to some the Border scenery is too stern, too uninhabited, and too aloof from mankind to please. To the Frenchman and the city lover it is *triste*, as a friend of the writer's once characterised it.

Washington Irving, as we know from his own account, was disappointed with what he saw upon the Scottish Border. 'Our ramble,' he wrote in his *Miscellanies*, 'took us on the hills commanding an extensive prospect. "Now," said Scott, "I have brought you, like the pilgrim in the *Pilgrim's*

[1] Miss Mary Coleridge.

Progress, to the top of the Delectable Mountains, that I may show you all the goodly regions hereabouts. Yonder is Lammermuir, and Smailholme; and there you have Galashiels, and Gala Water: and in that direction you see Teviotdale and the Braes of Yarrow, and Ettrick Stream winding along like a silver thread to throw itself into the Tweed." He went on thus to call over names celebrated in Scottish Song, and most of which had recently received a romantic interest from his own pen. In fact, I saw a great part of the Border country spread out before me, and could trace the scenes of those poems and romances which had in a manner bewitched the world.

'I gazed about me for a time with mute surprise, I may almost say, with disappointment. I beheld a mere succession of grey, waving hills, line beyond line, as far as my eye could reach, monotonous in their aspect, and so destitute of trees, that one could almost see a stout fly walking along their profile: and the far-famed Tweed appeared a naked stream, flowing between bare hills, without a tree or a thicket on its banks: and yet, such had been the magic web of poetry and romance thrown over the whole, that it had a greater charm for me than the richest scenery I had beheld in England. I could not help giving utterance to my thoughts. Scott hummed for a

moment to himself, and looked grave: he had no idea of having his muse complimented at the expense of his native hills.

'"*It may be pertinacity,*" *said he at length,* "*but to my eye these grey hills and all this wild border country have beauties peculiar to themselves. I like the very nakedness of the land; it has something bold, and stern, and solitary about it. When I have been for some time in the rich scenery about Edinburgh, which is like ornamented garden land, I begin to wish myself back again among my own honest grey hills: and if I did not see the heather at least once a year, I think I should die.*"'

CHAPTER II

PART I

A RETROSPECT

'Quhen Alysandyr, our kyng, was dede.
That Scotland led in luive and Le.
Away wes sons of Ale and Brede,
Of wyne and wax, of gamyn and gle,
Oure gold was changd into lede.
Cryst, born into virgynyte,
Succour Scotland and remede
That stad is in perplexyte.'

WYNTOUN, *Chronykil.*

BUT let us now turn back our eyes to the far past in order to trace the gradual evolution of the kingdoms of England and Scotland, and the settling of the Border boundary betwixt the two countries, until in the reign of Edward I. we meet with the first Lord Warden of the Marches.

The Roman Wall—the 'Picts' Wall,' as the old geographers termed it—in itself one of the earliest signs of the decay of Rome's strength—had drawn a rampart across Britain which should be a fence against the Pict and Scot.

The still earlier and more northerly bridle of forts

—that *praetentura* by which Agricola had held in subjection the unruly Picts between the Forth and Clyde—had not been linked together by a wall, and Hadrian chose the line between the Tyne and Solway for his great rampire—whether that be the vallum or the wall; and thus upon the Northumbrian and Cumbrian moorlands he built the 'Altars of the limits of the Roman Empire.'

The Emperor Severus again, accepting Hadrian's line of fortification, 'built a wall of stone across the Island' extending from sea to sea—from Wallsend that stands by the tidal waters of the North Sea to Port Carlisle on Solway Strand, thus leaving the greater part of what is now Cumberland and Northumberland in the possession of the Pict and Scot.

Then when the Romans in 410 withdrew their last remaining legions from the Island, the raids of the Picts and Scots upon the Romanised Britons would recommence with delight and be continued with zeal till such time as the Angles, Jutes, and Saxons possessed themselves of the land, and Edwin the Anglian built his 'burh,' as the early chroniclers aver, beside the Firth of Forth.

Fighting was the chief occupation of the time, and the Northumbrian Ethelfrith, extending his sovereignty over the kingdom of Deira, ruled from Humber to Forth; made his victorious way as far as Chester,

which he sacked, and was acknowledged as suzerain by the Scots in Dalriada and the Britons in Strathclyde, so that the boundary between England and Scotland at this time ran from the Forth to the Clyde.

But the fortunes of warfare ebbed and flowed, and when Egfrith was slain in 685 at the Battle of Nectansmere these same Scots and Britons renounced the overlordship of Northumbria. The sun of Northumberland's greatness was setting. The Danes established themselves in Deira, and Guthred gave to the successor of St. Cuthbert what came to be known as 'the Bishopric,' namely, all the land lying between the Wear and Tyne. Though Athelstane by his great victory at Brunanbuhr in 934 drove back Constantine, King of the Scots, and the mixed forces of insurgent Danes, Picts, Welsh and Cumbrians, by 963 Edinburgh was lost to England, and though Edmund—twenty years previously—had conquered Cumbria (viz. Cumberland and Lancashire), he had handed it over to the King of Scots upon what would soon come to be called 'feudal tenure,' but at the time 'was in reality a bribe to keep the peace.'

'The good old rule, the simple plan,' is still efficacious enough in our own twentieth century, as Austria-Hungary and Italy have shown in their respective treatment of Bosnia and Herzegovina,

and Tripoli. 'Honest' Austria and Italy alike, after the fashion of the 'wight-riding Robson' of the Play, have done a 'little shifting for their living.' On this analogy we may easily believe that had it not been for the superior power of the Normans no recognition of overlordship nor mention of homage would have been made for Cumberland or Northumberland by the King of Scotland: with a weaker England, these counties would inevitably have become part of Scotland.

Thus Lothian, which had been for so long a time English ground, had gradually lapsed to, or been taken by the Scots, Malcolm II. seemingly having wrested it from the feeble hands of Eadwulf Cutel in Canute's reign after the Scots' victory at Carham-on-Tweed in 1018.

Hence at the time of the Norman Conquest Malcolm Canmore held Cumberland, and a large part of Westmoreland, and a portion of what had been till recently Northumbria; so that it was not till nearly a century later that the boundary line between Scotland and England came to run from Berwick and the Tweed by Cheviot unto Carlisle.

There are on Stanemore, nigh to the old road from York to Brough and Carlisle, the remains of a cross styled the Rey, Roy (royal), or Rere Cross which Hector Boethius, the Scottish writer, 'recordeth to

have been erected as a mear stone or boundary between England and Scotland, what time William the Conqueror granted Cumberland unto the Scots, on this condition, that they should hold of him as his tenants, and not attempt anything prejudicial or hurtful to the crown of England.'

This is the picturesque tradition, derived from a name, as is commonly the case; the actual fact is that William the Conqueror crossed the Forth with an army and received homage of some kind from Malcolm Canmore at Abernethy.

Possibly it may have been no more than the 'simple homage'—*per paragium*—which carried with it no obligation of fidelity. Such was the homage rendered by the Normans to the King of France as opposed to the *homagium ligeum* whereby an individual became 'the man' or vassal of another.

As Hallam in his *View of the Middle Ages*[1] points out, this was frequently done for the sake of protection or security, and 'commendation,'[2] though it imposed homage, seems not always to have implied

[1] See his *State of Europe during the Middle Ages*, vol. i. pp. 114-5. (9th ed. Murray.)

[2] It may be pointed out in this connection that the Domesday freeholders 'were at liberty to sell their lands without the permission of any Lord, and to enter into a voluntary bond, known as commendation, by which they became the retainers of a magnate in return for his protection. But the bond did not necessarily confer on their Lord any right over their land.' See *Domesday Inquest*, by Ballard, p. 128. (Methuen, 1907.)

feudal service, being apparently dissolvable at the inferior's pleasure.

Whether this homage was for the grant of twelve villas in England, and a subsidy which William gave —a feudal recognition only—or whether Malcolm really 'became the man of the Conqueror' for his kingdom, or only for Lothian and Cumberland or certain possessions in England, English and Scottish historians will dispute to the day of doom. It was not, however, upon this homage paid by Malcolm to William, but upon the alleged 'commendation' of Scotland to England in A.D. 924, that Edward I. based his claim to the overlordship[1] of Scotland which was the origin of the 'feud' that raged along the Border for nigh three centuries.

Of the aforesaid 'commendation' the chronicler gives this account. 'In this year was Edward King chosen to father and to lord of the Scots' King (Constantine II.), and of the Scots and of Regnald King, and of all Northumbrians and eke of the Strath Clyde Wealas King, and of all Strath Clyde Wealas.'

With regard to this Dr. Hill Burton observes that these 'memoriales' derive their importance from the

[1] In reply to Pope Boniface's claim that Scotland was held in fief of the Court of Rome, Edward I., says the *Scalachronica*, 'caused a general Parliament to be summoned to Lincoln, where it was declared by all laws imperial, civil, canonical and royal, and by the custom of the Isle of Britain in all times from the days of Brutus, that the sovereignty of Scotland belonged to the regality of England, which was announced to the Pope.'

political use made of them later in connection with feudal institutions and their distinct practice of superiority and homage.

As to the authority for the statement that Malcolm Canmore became the Conqueror's 'man,' Dr. Hill Burton observes that Florence of Worcester drew his information from Walter l'Espec's speech at the Battle of the Standard in 1138, wherein Malcolm is said to have become William Rufus's 'man,' and the aforementioned writer thus sums up, 'The best we can make of the affair is, that it was a step in those arrangements by which the King of Scotland found it expedient to hold any land he claimed South of the Border through an understanding with the King of England.'

Northumberland, Durham, Cumberland and Westmoreland were not included in the Domesday Survey, either because they were too desolate, or, as has lately been suggested, because they were left as a *limes* or boundary by the Conqueror against the northern kingdom, and you must not forget that not till past the middle of the twelfth century did Scotland renounce her claim to Cumberland and Northumberland, for it was not till 1157 that Malcolm IV. agreed with his cousin Henry of England to give up all claim to Cumbria and Northumberland, so that not till this date can we draw the boundary

between England and Scotland by Solway and Tweed.

Henry II., again, by his thrice-fortunate capture of William the Lion at Alnwick, obtained as the price of his liberation the 'admission of a complete feudal superiority over the Kingdom of Scotland.' This was duly set forth in very distinct terms in the Treaty of Falaise in 1174, and William had to do homage *not only for his English possessions, but also for Scotland, and all his other possessions.*

But Richard Cœur de Lion, resolving to 'take the Cross,' renounced his claim for homage, and reserved only the title to such homage as was anciently rendered by Malcolm Canmore.

'For this renunciation William paid 10,000 marks; a sum which probably assisted in furnishing the expenses of Richard's expedition to Palestine.'

This claim then was revived by Edward I., who induced the Scots Lords to recognise himself as Lord Paramount before he proceeded to the election of Balliol to the Scottish crown.

It is true that Alexander III.—who had married Margaret, Edward I.'s sister—had done homage[1] to Edward for the lands he held of him in England

[1] His words as given in Rymer are: 'Ego Alexander Rex Scotiæ devenio ligeus homo Domini Edwardi Regis Angliæ contra omnes gentes,' and Robert de Bruce at Alexander's request swears allegiance for him.

'Ego Alexander, Rex Scotiæ, portabo bonam fidem Domino Edwardo

(Tynedale and Penrith), but John Balliol did homage to him for Scotland, thus acknowledging Edward as Lord Paramount.

Toom Tabard (empty coat) the Scots termed the unfortunate John, and so greatly did they mislike his lack of patriotism and his ill-luck that many years afterwards they insisted upon John, son of Robert II., sinking his baptismal name and assuming as his kingly title that of Robert III., wherefore he is sometimes alluded to as *John Faranyeir* or *Fernyeir*, meaning, he who was formerly called John.

'Now Edward I.,' to quote Mr. Andrew Lang, who acts as the fairest of umpires on this intricate battle-field, 'the greatest of the Plantagenets, the brave warrior, the open-handed friend, the true lover, the generally far-sighted politician, was not the false and cruel monster of early Scottish legend.

'But he was mortal; clement by disposition and feeling his temper could be stirred into cruelty by opposition.

'He took advantage of Scotland's necessities, and of the weaknesses and ambition of the Anglo-Norman foreign leaders to drive the hardest of conceivable bargains.

'Having decided the pleas in favour of Balliol, as

Regi Angliæ, et hæredibus suis Regibus Angliæ, servitia, de vita et membris, et terreno honore, et fideliter faciam servitia, debita de terris et tenementis, quæ teneo de Rege Angliæ supradicto.'

was just, it was now in Edward's power to support Balliol, and to treat him with generous and statesmanlike forbearance.

'To Balliol, the vassal, he was uniformly lenient and just; to Balliol, the King, he was proud and unbending to the last degree.'

Not satisfied then with suzerainty, Edward was determined to make Scotland part of his own kingdom. The easiest way to do that was to goad Balliol into rebellion, and then to confiscate the kingdom of Balliol. 'This was what Edward deliberately did. The result was that, far from winning Scotland, Edward converted that nation into a dangerous enemy, and presented France with a serviceable ally.'

James I. of Scotland, by his treaty and the marrying of his daughter Margaret to the French Dauphin (afterwards Louis XI.), cemented this alliance between France and Scotland that had so often proved, and was so often through long years to continue to prove, so inimical to England.

Thus two years after this marriage, when Lord Scrope was sent to negotiate a peace with Scotland on the basis of restoring Berwick and Roxburgh, it was urged in the Scots Parliament that peace could not be made without the consent of France.

Death prevented, however, Edward I.'s plans for

the subjugation of Scotland from being realised; Bannockburn also intervened; and in 1328 by the Treaty of Northampton Scottish independence was definitely recognised.

'There was to be perpetual peace between the two kingdoms; the Coronation Stone was to be restored to Scone (which has never been fulfilled to this day), and the King of England was to use his good offices at the Papal See to obtain remission from excommunication for the King of Scots.

'The Ragman Roll, being the damning record of all the Scottish gentlemen who had done fealty to Edward I., was to be returned to Scotland, and also that chip of the true Cross which the Scots had learned to revere as the Black Rood.[1]

'In return for the surrender of all claim to suzerainty on the part of England, the Scottish government bound itself to pay £20,000 in three instalments at Tweedmouth.'[2]

This final reconciliation was to be consummated by the marriage, which took place in the following year, between the son of King Robert—David II.—and the Princess Joanna, daughter of Edward III.

[1] The Black Rood was a large crucifix, with figures of St. Mary and St. John, of silver; but a small gold crucifix, probably with a relic of the Cross enclosed in it, which had been St. Margaret's, was apparently also called the Black Cross or Rood. Both were at Durham. See *Rites of Durham*, ed. Fowler. (Surtees Society, vol. cvii.)

[2] Sir Herbert Maxwell, *The Story of the Tweed.*

PART II

THE ORIGIN OF THE FEUD

It needs not to invoke the muse, to apostrophise Clio, in order to discover who first set afoot the feud, or 'blew the coal' betwixt the English and the Scots.

Edward I. would doubtless willingly lay claim to be the founder, for he certainly hated the Scots as much as they hated him. It was owing to his policy that the bickerings betwixt English and Scots, which had been at first intermittent, and as it were merely occasional diversions—to the people of those days what football matches are to ours, or the usual activities of one sovereign against the other's realm at a favourable moment, when he was ill or abroad—grew into 'deadly feud' and separated the two nations as with a fresh vallum or dyke of hatred for some three hundred years.

When Edward died—it was on 6th July 1307, near Burgh-upon-Sands, by Solway, with his eyes looking towards Scotland, fulfilled of anger and longing for vengeance—'he made his son promise,' writes Sir Walter Scott, 'never to make peace with Scotland until the nation was subdued. He gave also very singular directions concerning the disposal of his dead body. He ordered that it should be boiled in

a cauldron till the flesh parted from the bones, and that the bones should be wrapped up in a bull's hide and carried at the head of the English Army as often as the Scots attempted to recover their freedom.

'His son, Edward the Second, did not choose to execute the strange injunction, but caused his father to be buried in Westminster Abbey; where his tomb is still to be seen, bearing for an inscription:—

'"Edwardus longus Scotorum malleus hic est." (Here lies Edward Longshanks, the hammer of the Scots.)'

Stow in his *Annales* merely says that the King 'being himselfe vexed with the bloodie flixe [flux] he sent unto his sonne that he should come with speede to heare his last wordes whome, among other thinges, he did consell to bee merciful, just and constant in all his wordes and deedes: he commaunded him not to be too hastie to take upon him this Crowne of England, untill hee had revenged this doone by the Scottes, but rather to staye in those parts, and to cause his Father's bones (being closed in a chest) to be borne about with him, till he had gone throrow all Scotland and overcome his adversaries.'

CHAPTER III

THE ASPECT OF THE MARCHES AND CHARACTER OF THE MARCHMEN, WITH AN ACCOUNT OF 'DEADLY FEUD'

'For here be some have pushed as far
On Scottish ground as to Dunbar;
Have drunk the monks of St. Bothan's ale
And driven the beeves of Lauderdale,
Harried the wives of Greenlaw's goods
And given them light to set their hoods.'

PART I

THE RAID AND THE FORAY

LESLIE in the 'nynt buik' of his *History of Scotland*, under date 1531, writes:—

'Quhen the King of Ingland saw that his bordour's war in gret danger, gif the Scot's bourdour maid ony invasione or onset, cheiflie because the Inglis bordour was sa il inhabited,[1] sa few in multitude, and the Scotis bordour sa weil inhabited, and in sik multiplie; he consulted with al his estates how to remeid this.

[1] About the same date Sir Robert Bowes, in his *Book of the State of the Frontiers and Marches*, tells us that the 'great occasion of the disorder of bothe those Countries [Tyndale and Redesdale] is yt there be mo inhabitants within eyther of them, then the said Countries may susteine to live trewlie, for upon a ferme of a noble rent there do inhabite in some place there iii or iiij householders, etc.' We may conclude perhaps that the Scots soil being richer furnished an easier subsistence proportionately to the number of its inhabitants and repaid cultivation better than the soil of the English Marches.

His wil was to rais a taxte throuch al Ingland, that as the Scotis bordour was weil disponet for the inhabitouris in hilis and dales, sa mycht the Inglis be brocht to the same dis-positioence: bot because the Inglishmen war wonnt ay to be frie of custome, nawyse wil tha grant that custome to the King, and sa nathing was concludet quhat the King requiret.'

Probably then even in early days the Scottish Border was more fertile and better cultivated than the English: certainly the great vale of the Tweed suggests fertility, in strong contrast to the barrenness of the Coquet, Rede and North Tyne. 'Scotland shows like a fair garden,' said a shepherd in the writer's presence not many years ago on the height of Windy Gyle, glancing forward to the distant prospect northward, after viewing the bleak moorland behind him that spread away to the water of Coquet.

To-day lambs will 'make' five shillings more through the winter if pastured on the north side of the Tweed; potatoes will bring in a greater return per ton and wheat per boll when grown upon the Scots side of the Border river.

'The rich old red sandstone is the root cause of it,' so a practical Northumbrian farmer, a lessee of many acres, assured the writer.

Again, another advantageous factor for England in the spoiling of her 'old enemy' lay in the comparative

freedom from intestine feuds amongst the English 'frontierers.'

Even on the occasion of a national Scots raid as, for example, before the 'Battle of Otterburn,'[1] when 'the doughty Douglas bound him to ride

Into England to drive a prey,'

the clan Jardine would not go with him.

'The Jardines would not with him ride
And they rue it to this day.'

Scots and English alike were inbred thieves; but the feuds that broke out between the Scots and Kers, and Kers and Elliots, and the Maxwells and Johnstones must often have sadly hampered their activities, and again the heads of the great Scottish clans upon the marches were far oftener at variance with their sovereign than was the case on the Southern Border, for the Scots Borderers in general were very loose in their alliance to him whom they termed occasionally in contempt 'the King of Fife.'

Now, surveying the desolations through the centuries wrought upon the Border by either side, it

[1] The opening or opportunity offered by the animosity of the great Border families may be illustrated from Froissart, who says that the Scots raid that terminated in the Battle of Otterburn was due to the quarrel between Neville and Percy. 'The Barons and Knights of Scotland knowing of this, determined on an inroad to England, as the opportunity was favourable, now that the English were quarrelling amongst themselves, to make some return for the many insults they had suffered from them.'

may perhaps be asked why the history of the marches should possess such a fascination? Why should it not be passed by as but a record of the fighting of 'kites and crows'?

The country itself is very bare in aspect, cold in climate, largely uninhabited to this day. Harvestless as ocean, it stretches its league-long billows of grey-green grass land and brown bent to the uttermost horizon. Parched by the harsh winds, cropped by the grey mists, and void of trees, wherein lies its fascination?

It is because of its very untamed aspect that it charms. It is the home of romance, and the wild land has been the fruitful mother of a wild, stern chivalry.

A splendidly hardy,[1] Spartan type of character resulted, and the women were not inferior in courage to the men. Thus when a Milburn, proceeding to settle a little difference in Bellingham with another Borderer, called to his wife, 'Wife, bring me out a clean sark: it sall niver be said that the bluid of the Milburns ran down upon foul linen,' she promptly obeyed, and stood watching the combat with discarded 'sark' upon her arm.

Another Milburn of the same 'grayne,' 'Barty of

[1] Cp. Camden on Northumberland in his *Britannia*, p. 847. (London, 1695.) 'The country itself is mostly rough and barren, and seems to have harden'd the very carcasses of the inhabitants: whom the neighbouring Scots have render'd yet more hardy, sometimes inuring them to war, and sometimes amicably communicating their customs and way of living.'

the Comb,' who flourished about the end of the seventeenth century, was the hero of a hundred tales. The following exploit of his was told to the writer by a descendant of the same family.

One morning as Barty came forth from his Pele tower he discovered that his sheep were missing. Forthwith he went up to the neighbouring Pele of his friend, Corbit Jock, to inform him of the loss.

'Ay,' said Corbit Jock, 'Scotland will ha' them dootless.'

So without more words the two friends set off upon the 'hot trod.' They travelled on foot down the Blakehope burn into Redewater, and so over the Carter into Scotland.

Losing the track of the sheep they determined to right themselves by 'lifting' the best Scots wethers they knew of, which were those at Leatham Farm, near Souden. There they selected the finest of the flock, and set off homewards, driving their booty before them. Whereupon the Scotsmen, becoming aware of this unexpected raid, sent two of their best swordsmen in pursuit. At Chattlehope Spout, Barty and Jock were overtaken, and a parley ensued. Barty generously offered to give up half of his flock, but 'toomhanded' he would not return home. The Scotsmen, however, would not agree to this, and soon swords were swiftly flashing upon the moor.

'Leave the better man to me,' cried Barty, and two desperate duels were at once in full swing.

The Scots swordsman shortly ran Barty through the thigh, but the Englishman, with a sudden wrench of his body, succeeded in snapping the sword in two, when he was promptly attacked by the second Scot, who had already slain his friend Jock.

Then Barty with a mighty back-handed sweep of his sword caught the Scot in the neck, '*garring his heid to spang alang the heather like an inion*,' and then chased his fresh assailant and cut him down instantly. He then collected the swords, shouldered his dead friend, and drove off all the wethers in front of him, and stayed not till he had brought back Jock to his own door-cheek and the sheep to his fold.

The character of the Borderers on either side of the march, as they were subject to the same stress and similar conditions of life, did not vary greatly, and their dialect was almost identical. Froissart gives the following account of the Scots Borderers, which would probably be also applicable to the English :—

'The Scots are bold, hardy, and much inured to war. When they make their invasions into England, they march from twenty to twenty-four leagues[1]

[1] The editor in a footnote says, 'Whenever English leagues are mentioned Lord Berners translates them, and probably correctly, miles : it is incredible that a body of men armed at all points should travel from 60 to 80 miles a day on horseback, which the Scots must have done, if we are here to read leagues.' But it must be pointed out in this connection that immediately before the above passage of Froissart, it is stated

without halting, as well by night as by day: for they are all on horseback, except the camp followers, who are on foot. The knights and esquires are well mounted on large bay horses, the common people on little galloways.

'They bring no carriages with them on account of the mountains they have to pass in Northumberland: neither do they carry with them any provisions of bread or wine: for their habits of sobriety are such, in time of war, that they will live for a long time on flesh half sodden, without bread, and drink the river water without wine. They have therefore no occasion for pots or pans: for they dress the flesh of their cattle in the skins, after they have taken them off: and, being sure to find plenty of them in the country which they invade, they carry none with them. Under the flaps of his saddle, each man carries a broad plate of metal: behind the saddle a little bag of oatmeal: when they have eaten too much of the sodden flesh, and their stomach appears weak and empty, they place this plate over the fire, mix with water their oatmeal, and when the plate is heated,

that Carlisle is distant from Newcastle '4 *and* 20 *English Leagues*,' which is incorrect if translated into miles; again, it may be added that sometimes, even in the present age, the followers of the Border Hounds will ride as many as sixty miles in the day, and the present writer has left home, and returned thither, in the dark, after a prolonged run. The Borderers of old rode out of necessity—the story of the Charlton Spur (which is still treasured at Hesleyside) will recur to the memory—and the descendants of the ancient 'names,' as the Robsons, Dodds, Elliots, still exhibit the like gift of horsemanship and tireless riding.

they put a little of the paste upon it, and make their cake, like a cracknel or biscuit, which they eat to warm their stomachs; it is therefore no wonder that they perform a longer day's march than other soldiers.'[1]

The following character of 'the Northern Gentry' is taken from Gray's *Chorographia*,[2] first printed in 1649:—

'The nobility and gentry of the North are of great antiquity, and can produce more ancient families than any other part of England: many of them gentry before the conquest: the rest came in with William the Conqueror. The noblemen and gentry of the north hath been always imployed in their native country, in the warres of the Kings of England against the Scots; all of them holding their lands in Knights service, to attend the warres in their own persons, with horse and speare, as the manner of fighting was in those dayes.

'Some gentlemen held their lands in cornage[3] by blowing a horne to give notice that the Scots, their enemies, had invaded the land. The Scots, their

[1] P. 18, vol. ii. Froissart. Johnes' translation. (G. Routledge & Sons.)
[2] See p. 67 of *Reprints*. (Richardson, Newcastle.) 1813.
[3] *Cornage*. This is an ancient and picturesque error. Cornage is the O. F. cornage—the 'droit qui se levait sur les bêtes à cornes.' As Robertson points out in his *Historical Essays*, 'The tenure of a pastoral state of society was Cornage. The herd was numbered, or the flock, the tenth animal was set apart as the prerogative of the King or Overlord.'

neighbouring enemies, hath made the inhabitants of Northumberland fierce and hardy, whiles sometimes they kept themselves exercised in the warres: being a most warre-like nation, and excellent good light horsemen, wholly addicting themselves to wars and armes, not a gentleman amongst them, that hath not his castle or tower: and so it was divided into a number of barronies, the lords whereof, in times past, before King Edward the First's days, went commonly under the name of barons, although some of them were of no great living. It was the policy of the Kings of England to cherish and maintain martiall prowesse among them, in the Marches of the Kingdome if it were nothing else, but with an honourable bare title. Some gentlemen of the north are called to this day Barons.'

It must not be forgotten that the inhabitants of the Border on either side regarded the vocation of raiding and reiving as an art, a rougher sort of hunting.

> 'I would have none think that I call them Thieves;
> For if I did it would be arrant lies.'

So Captain Walter Scot of Satchel wrote in the seventeenth century of the Armstrongs, and regarding the Borderer in this wise we need not be concerned about his fate, for the perfect hunter goes, as Gaston de Foix says advisedly, *tout droit en paradis.*

'Hunting causeth a man to eschew the 7 deadly sins,' so it is written in the book of the *Master of Game*, and again, 'Men are better when riding, more just and more understanding, and more alert and more at ease, and more undertaking, and better knowing of all countries and all passages: in short and long all good customs and manners cometh thereof, and the health of man and of his soul.'

Sir Philip Sidney—the Bayard of England—*sans peur et sans reproche*, that 'very gentle parfit knight,' rightly divined the jewel that lay beneath the hard aspect of the country and the harsh, nay, often brutal, deeds of the 'Borderers dwelland on the marches'; and Goldsmith wrote thus in his *Essays*, 'The music of the most accomplished singer is dissonance, to what I felt when an old dairymaid sang me into tears with "Johnie Armstrong's Last Good Night."'

In his deft and memorable words, Sir Philip Sidney likened the Border Ballad to the trumpet's sound, as he wrote in his *Apologie for Poetrie*: '*Certainly I must confess my barbarousness, I never heard the old story of Percy and Douglas that I found not my heart moved more than with a trumpet; and yet it is sung but by some blind crowder, with no rougher voice than rude style; which being so evil apparrelled in the dust and cobwebs of that uncivil age, what would it work trimmed in the gorgeous Eloquence of Pindare?*'

Sir Philip had stayed upon the Western March as a guest at Brougham Castle, and there, it is said, had written part of his *Arcadia*: he may even have seen the bale fire on Penrith beacon flame on the midnight sky as it handed on the red warning from Skiddaw that the Scots or the 'Batablers' were 'riding.'

Life upon the Borders, during those centuries of raiding, to our modern mind no doubt seems unendurable, a monotonous breaking of the Sixth and Eighth Commandments. Yet even then there were peaceful intervals, it must not be forgotten, when the various 'names' or clans on either march wended their way to the high fells with their flocks, and spent their spring and summer in pastoral occupations, and would converse with each other even as outlying picquets of soldiers do when a truce has been proclaimed. They got to know each other then: they met also at football matches and horse races, and we read of Scots and English entering into 'bonds' for each other at Border meetings or days of truce.

You read of 'Humprey Musgrave' (Lord Scrope's deputy) taking the Laird of Mangerton prisoner in his own house in Liddesdale, and bringing him prisoner to Carlisle 'to answere what shalbe layd unto him.' Then again later you read of a horse race in Liddesdale where Humprey Musgrave's horse 'Bay

Sandforth' 'ran and won all the 3 bells,' and was presently given to the Laird of Mangerton.[1]

The education of the ancient Persians, so Xenophon tells us, was devoted to the inculcation of three virtues, riding, shooting, and speaking the truth. That of the Borderers of old was devoted to a somewhat similar Trivium, riding, raiding, and keeping troth.

The keeping troth meant loyalty to their word, but it also included loyalty to their chief or headsman.

Thus Constable,[2] employed as a spy by Sir Ralph Sadler, says that 'they would not care to steal, and yet they would not bewray any man that trust in them for all the gold in Scotland and France.' And again in regard to the Regent Murray, who surrendered the Earl of Northumberland to Elizabeth, and Hector of Harlaw (an Armstrong), who betrayed him when he had taken refuge in Scotland after the failure of the rising of the North, this same Constable reports the indignation of the Borderers, 'some outlaws of England, some of Scotland,' against the Regent Murray and Hector of Harlaw as follows :—

'I hard, *vox populi*, that the Lord Regent would not, for his own honor, nor for the honor of his country, deliver the Earles, if he had them bothe, unless it were to have there Quene delivered to him,

[1] See *Calendar of Border Papers*, vol. i. pp. 127 and 180.
[2] Sadler, *State Papers*, vol. ii. pp. 380-95. (Edinburgh, 1809.)

and if he wold agre to make that change the Borderers wold stert up in his contrary, and rescue both the Quene and the Lords from him, for the like shame was never done in Scotland; and that he durst better eate his owne luggs than come again to seke Farneherst; if he did, he should be fought with ere he came over Soutrey edge. Hector of Harlowe's hedd was wished to have been eaten among us at supper.'

A proverbial saying, which dates from this time, 'to take Hector's cloak,' denoted the infamy of such betraying of faith. Froissart also alluded to the same faithfulness. 'English and Scots are excellent men at arms,' he says, 'and whenever they meet in battle they do not spare each other; nor is there any check to their courage so long as the weapons endure. When they have well beaten each other, and one party is victorious, they are so proud of the conquest that they ransom their prisoners instantly, and in such courteous manner to those who have been taken, that on their departure they return them their thanks.'

If when the time of payment arrived the prisoner was not able to settle with his captor, he would at once surrender himself. There is a celebrated instance of the loyalty of the follower to his chief in the tracking of Starkhed, one of the murderers of Sir Robert Ker, the Scottish Warden, at a Border meeting in 1511.

Starkhed fled, it is said, nearly as far south as York, and there lived in private and upon his guard. 'Yet in this place of security he was surprised and murdered by two of Sir Robert Kerr's followers, who brought his head to their master, by whom, in memorial of their vengeance, it was exposed at the Cross of Edinburgh.'

Sir Walter Scott, alluding to this in his introduction to Border antiquities, writes :—

'As the Chief was expected to protect his followers, in good and evil, from the assaults of their neighbours, and even from the pursuit of justice, the followers and clansmen were expected, on the other hand, to exhibit the deepest marks of devotion to his interest, never to scruple at his commands when alive, and in case of his death by violence, to avenge him, at whatever risk to themselves.'

Thinking upon these rugged virtues of the wild Borderers, we may 'confess our barbarousness,' for they developed a type of character which has lasted with advantage to the State to the present day.

Underneath the 'barbarousness' lay the warm heart, the set purpose and the firm faith of the Borderer, and the fine lines of the great Northumbrian poet may well be applied, though written in honour of Northumberland, to the whole extent of the Borderland.

'None save our Northmen ever, none but we,
Met, pledged or fought
Such foes and friends as Scotland and the sea
With head so high and equal, strong in glee
And stern in thought.

The splendour and the strength of storm and fight
Sustain the song
That filled our fathers' hearts with joy to smite,
To live, to love, to lay down life that right
Might tread down wrong.

They warred, they sang, they triumphed and they passed,
And left us glad
Here to be born their sons, whose hearts hold fast
The proud old love no change can overcast,
No chance leave sad.'

PART II

'DEADLY FEUD'[1]

'The people of this country hath had one barbarous custom amongst them: if any two be displeased, they expect no law, but bang it out bravely, one and his

[1] '*Deadly feud*'—arising originally out of the spirit of clanship and pride of family—was extended even to cases tried at the assizes out of arrogance and brutality.

Thus Musgrave in a report to Burghley concerning 'Border Riders' (*Calendar of Border Papers*) says:—

'Hardly deare anie gentlemen of the cuntrey be of any jury of lyfe and death yf any of them be indyted, as the justices of that circuit can testefie, they are growne so to seke bloode, for they will make a quarrell for the death of their grandfather, and they will kyll any of the name they are in feade with.'

kindred against the other and his: they will subject themselves to no justice, but in an inhuman and barbarous manner, fight and kill one another; they run together clangs (as they tarme it), or names. This fighting they call their feides, or deadly feides; a word so barbarous that I cannot explain it in any other tongue.

'Of late since the union of the kingdomes, the heathenish bloody custom is repressed, and good laws made against such barbarous and unchristian misdemeanours and fightings.'

So wrote Gray of the Northumbrian, but the Scottish Borderer obeyed the old Hebraic precept of 'eye for eye and tooth for tooth' even more devoutly, the 'perfervidum ingenium Scotorum'[1] being peculiarly manifested therein.

The length to which such a feud might go is well illustrated by the mutual hatred of the Johnstone and Maxwell clans.

This feud arose in 1585, when John, Lord Maxwell, falling under the displeasure of the Court, was denounced rebel, and a commission was given to

[1] Note to Leyden's 'Ode on visiting Flodden' (*Border Minstrelsy*, vol. iii., Cadell's Edition), where it is written that 'in the Border Counties of Scotland, it was formerly customary, whenever any rancorous enmity subsisted between two clans, to leave the right hand of male children unchristened, that it might deal the more deadly, or, according to the popular phrase, "unhallowed blows" to their enemies. By this superstitious rite, they were devoted to bear the family feud, or enmity.'

the Laird of Johnstone (then Warden) to arrest him.

In the fighting that ensued Johnstone's castle of Lochwood was burned, and he himself subsequently defeated and made prisoner, of which disgrace, it is said, he died.

Maxwell was now made Warden and subscribed a bond of alliance with Sir James Johnstone, but in 1593 the feud broke out again, and at the battle by Dryffe Sands, near Lockerby, Johnstone was victorious and Maxwell was cruelly slain. Maxwell's son swore deep revenge, and in 1608 accomplished his purpose by the basest treachery. The murderer fled, but was eventually apprehended after his return from France, and condemned and beheaded in 1613.

'Thus,' wrote Sir Walter Scott in the *Border Minstrelsy* ('Lord Maxwell's Good Night'), 'was finally ended by a salutary example of severity, the foul debate betwixt the Maxwells and Johnstones, in the course of which each family lost two chieftains; one dying of a broken heart, one in the field of battle, one by assassination, and one by the sword of the executioner.'

'Though I have slain the Lord Johnstone,
What care I for their feid?
My noble mind their wrath disdains,—
He was my Father's deid.

Both night and day I labour'd oft
Of him avenged to be;
But now I've got what lang I sought,
And I may not stay with thee.'

These family vendettas were an 'unconscionable time a-dying' out, for 'all is dishonorabell,' said Alexander Napier in 1600 when offered £1000 by Buccleugh, the first Lord Scott, as blood money for his brother's slaughter, 'quhair there is not eie for eie and tuith for tuith.'

And finally in 1611, James VI. and I. has to call upon the Privy Council—the deadly feud between Veitches and Tweedies being yet unreconciled—to summon before them 'the principals of either surname,' and force them to agree upon pain of imprisonment.

CHAPTER IV

PART I

'THE MARCHES OF ENGLAND FOR ANEMPST SCOTLAND' WITH SOME ACCOUNT OF THEIR ADMINISTRATION

THE survey of 1541 sets forth the boundary betwixt England and Scotland, and describes the three divisions of the Eastern, Middle, and Western Marches, which stretched from Berwick to the Hanging Stone on Cheviot, from Hanging Stone to Cryssop (or Kershope foot), and from Cryssop to Carlisle.

Thus the Border line ran from the North to the Irish Sea, from the river Tweed to Solway, athwart 'Cheviot's mountain lone,' along the Windy Gyle,[1] where Warden frequently met Warden (and where Lord Francis Russell was slain in 1585—a cairn still marking the spot), by the Reidswire at head of the Rede (where the famous raid took place in 1575)

[1] The trysting-places of the Wardens of the Marches seem usually to have been, for the Eastern March the Hanging Stone on Cheviot or the Riding burn; for the Middle, Hexpeth gate on Windy Gyle or Gamblespath—slightly farther westward—at head of Coquet; and for the Western, Kielder stone and Kershope foot. Cp. Lord Scrope's report, 'Cesford also demanded meeting at Gamblespath, instead of Kirshopfoot, the accustomed place, and put off justice for five years.' (*Calendar of Border Papers.*)

across Catcleugh Shin and broad Carter Fell to Peel Fell, beyond Kielder and the mighty Kielder stone where the western Wardens met, thence to the meeting of the Kershope burn with the Liddle water, and so by Esk to the Eden and the ancient Roman town of Luguvallum—the fair, red-walled town of 'merry Carlisle.'

What a host of warlike and romantic memories follow upon these names!

Berwick-upon-Tweed—bone of contention through the centuries betwixt English and Scots—taken and retaken thirteen times, till Edward IV. in 1482 finally secured it to the English realm—jealously guarded by the Warden of the Eastern Marches—the 'fairest jewel in her crown,' as Queen Elizabeth styled it. *Cheviot*—land and sea mark alike, from whose eastern height you can see the storied coast of Northumberland with its mighty castles — proud Bamborough, lonely Dunstanburgh, and a little beyond and set within the sea Holy Island and the Farnes, with their undying memories of saintliness and courage. On its western side you can see over into Scotland across the dipping hills, and from afar descry the purple Eildons in the vale of Tweed so beloved by Sir Walter Scott, who dwelt within their shadow, the scene of many a Chevy Chase and innumerable skirmishes: as also the line of Watling

Street on its way to Ad Fines Camp at the head of Coquet, where the Roman lituus sounded to the earlier forays of Roman and Briton against the Picts. On again the eye can travel westward in the direction of Liddesdale, where the fiercest of the Borderers—the Elliots and the Armstrongs—lived secure within their 'swyres,' and finally the imagination will wing its way on to high Skiddaw, within whose shadow lies Carlisle, whereof the Lord Warden of the Western March kept the castle, save when Buccleugh in 1596, the date of the last great Border exploit, broke in and took thereout 'Kinmont Will' in despite of the Lord Scrope.

A romantic land indeed, and beyond all others the scene of perpetual fightings—even from before the advent of the Romans right down to 1745, when Prince Charlie took for some few weeks 'the red town' into Jacobite keeping.

We set down here the following description of the Borders as given in a draft of Thomas Phillips[1] (Walsingham's secretary) in Queen Elizabeth's reign:—

'The Borders are the three shires of Northumberland, Westmerland and Comberland, which are the parts farthest north of England adjoyning uppon Scotland. They are devided according to theyr situacion into 3 marches—the est marche, the west marche, the

[1] See *Calendar of Border Papers*, vol. i. pp. 30-33.

middle marche. The est marche contayning the part of Northomberland which is near unto Scotland on the Est side of England, beginning at a place called the Hanging Stone at the west end of the Forrest of Cheviot, and so coming down by a little rinnel or brooke, called Caudgate, which fallyth into the river of Till, stretches as the old Borderers of the middle marche affirme, from the north side of Bewick Lordshippe down the water of Warne to the Warne-ford, as the Lordshippes of Bamborough and Alnewick are divided. But as the est Borderers say, the river of Ale (Aln) maketh the division: which opinion semeth presentlye to take place, part of Alnwicke lordshipp being numbered with that marche.'

Sir Robert Bowes in his Report wrote that 'of the perfect bounder betwene these two marches I could never be certen,' but points out that 'the Lord Ewrie,' Warden of the East March, 'clamed from the confines of Berwike south-eastward to the water of Aile, and so downe that water to the sea to be all of the East Marches, and his argument was because (as he said) all villages in that quarter were contributorie to the findinge of the beakne at Lawes Castle.

'The west marches are the two shires of Comberland and Westmerland, beginning, at Carsopp rigg, or as the West Borderers and Scottes affirme, at the foote of Carsopp or Carsopp rigg, a common passage

where many spoyles were wont to enter into the border, and therefore the jurisdiction for the holle refused by the Wardens, because the custom was in former times that the same marche wher goods entred, should be answerable for them at the day of truce.

'The middle marches bounded as before on the est part, and on the west descending from Carsopp down to Poutreshe,[1] and so further as the knowen division goes of the shires of Westmerland and Comberland, contayneth the rest of Northumberland.'

There was some doubt as to the precise western limit of the Middle March, for, as Sir Robert Bowes remarks in his Survey,[2] 'At Carsoppe [Kershope] hath been some alteracion or doubt what partye thereof is the true meetes or boundes, betwene the west marches of England and the middle marches, for the Borderers of the middle marches of England affirme that the division is at Carsopp rigge or Cassenburne [Christinbury] cragge, and both the Scottes and the Borderers of the west marches of England affirme that the bounder betweene ye said

[1] Sir Robert Bowes calls it 'Powtresse' (Poltross), a burn which runs into the Irthing from the south somewhat west of Thirlwall Castle.

[2] It will perhaps be of interest to the reader to know where to find the report made of the English Border—the Survey in 1550 by Sir Robert Bowes which he calls his *Informacions*. This Survey of the Border is printed in Hodgson's *History of Northumberland*, and also from a foolscap folio MS. from Sir Cuthbert Sharp's library, in *Reprints*, vol. iv. (Historical). (Richardson, Newcastle.)

marches is at the foote of Cassope or Carsope bridge, which is a common and waye as well for the theves of Tyndall, Bew Castle, and Gillesland in England as for the theves of Liddesdale in Scotland with there stollen goodes from th' one realm to th' other.'

In the accompanying map [1] Speed evidently follows the opinion of the Borderers of the Middle March, for he rounds Northumberland off by Christinbury crag, not by Kershope foot.

From the above and from the musters of the East and Middle Marches, as also from the musters of Cumberland and Westmoreland made by the command of the various Lord Wardens, one gathers that for purposes of Border warfare all dwellers in Northumberland and Cumberland and at least half of those in Westmoreland might be called upon by their various Wardens to take part in offensive or defensive fighting.[2]

[1] Crosses have been added to this map at the generally accepted divisions of the marches where the Wardens met.

[2] Tenure on the Border

It was definitely enacted by the Border Laws, as will be shown later, that every man must 'rise and follow the fray, upon blowing of horn, shout, or outcry; upon pain of death' (Articles revised at Newcastle, sixth year of Edward VI.), but from the first apportionment of lordships or manors by William the Conqueror military service against the Scots seems to have been included in their tenures.

'The tenants of the several manors were obliged all along, upon firing of beacons or other warning, to attend their lord in the service of the Borders at their own expense; which attendance might be prolonged for 40 days.

NORTH
DIVISION OF MARCH
NORTHUM
BERLAND.
THE EAST MARCH
THE MIDDLE MARCH
THE OSTADINI
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PART
GER

I.—MAP OF NORTHUMBERLAND AND THE EASTERN MARCH.

Thus the East March from Berwick to the Hanging Stone on Cheviot, and southward and eastward therefrom to Alnmouth, was liable to be mustered by the Warden of the East March.

The 'cumbersome' Middle March from Cheviot to Kershope foot westward, and southward as far as the Tyne—together with Hexhamshire and Allendale—was liable to be mustered by the Warden of the Middle March.

The Tynemouth footmen seem to have been excepted, for Sir Robert Bowes reports 'that of late yt was ordered that the fottmen within the ye Lordshippe of Tynmouth should be attendant upon the Castle there, and not to assemble with the

And according to the value of their respective tenements, some were obliged to serve on horseback, and others on foot, with their proper accoutrements. Hence there were *nag* tenements and *foot* tenements: the owners whereof were obliged to furnish their stipulated number respectively, on pain of forfeiting their estate to this lord. Within the manor of Bewcastle in particular, they seem to have been all *nag* tenements; for in the reservation of an heriot to the lord upon the death of a tenant, there is an exception of the riding horse of every such tenant, kept by him for the lord's service, according to various custom.' (Burn and Nicholson, vol. i. p. 8.) Again, in the 'Survey of the Debateable and Border Lands adjoining the Realm of Scotland and belonging to the Crown of England, taken in 1604' (printed by Sanderson, Alnwick, 1891, from Additional MS. 14,048, British Museum), it is stated in the Fifth Article that 'the Tenants of the manor of Wark challenge to holde their Tenements by title of Tenante right, payinge their rents and doing their services upon the Border, which services were to bee at the command of the Keeper to serve in fields on horse or foote: for the defence of the Border land in which many of the inhabitants have lost their lives'; and also in the Ninth Article it is stated that 'the freeholders are at the commaunde of the Keeper (of Tynedale) to serve in field on horse or foote for the defence of the Border Lands in as strick a manner as anie of the customarye Tenants.'

Warden unlesse yt were for resistannce of an urgent daingerous invasion, but the horsemen of that Lordshippe should assemble at the commaundement of ye Warden and ryde with him as the residue of the Countrie dothe.'

As for the Bishopric of Durham,[1] he reports that 'the nombre that have usuallie bene sent furth of the Countrie of Durham for the resistannce of an invasion of the enymyes within the east and middle marches have bene 1,000 men or thereaboutes, or towards an explotic or joineye to be donne in Scotland 500 men or thereaboutes. And for the assemblie of that releiffe the Warden have used to write to the Bishoppe of Durhame (if he were dwellinge within the Countrie) and in his absence to the Sheriffe and other like officers of the same Countrie.'

The West March, again, running from Kershope foot to Carlisle and the sea westward, and southward extending as far as Shap and Crosby Ravensworth in Westmoreland, would be mustered by the Warden of the Western March. The musters for Cumberland, as given in the *Calendar of Border Papers* in the reign of Queen Elizabeth, cover the wards of Eskdale, the Leith ward, Cumberland ward with the barony of Dalston, and 'Allerdale ward

[1] See Appendix III.

beneath the water of Darwen' (the Derwent). The muster of Allerdale ward *above* Derwent—that is, the portion of land lying between the rivers Derwent and Duddon and extending by the coast line from Workington to Broughton-in-Furness—is not given with the others in the *Border Papers*, but it is grouped with the others in the return given by Mr. Bell, the west Warden clerk.

In Westmoreland the west and middle wards are included in the musters—that is, roughly the country from Ullswater to the Eden by Appleby, the east ward and Kendal ward being apparently exempt. We give here the Lord Wharton's Proclamation as Warden of the West March in 1547.

'A Proclamation made at Penrith, June 14, 1547, for Raising the Power of the Border

'Forasmuch as the Governor of Scotland, their Queen, and other noblemen of that realm, repared to Pebles upon Sunday at night last, and also their ordnance coming from Edinburgh, of intent with a great army of the whole body of the said realm of Scotland to do some enterprize against the King's Majesty's possessions and subjects upon their West Marches: therefore, Thos. Wharton Knight, Lord Wharton, Lord Warden of the West Marches of England for anempst Scotland, captain of the King's

Majesty's City of Carlisle, and one of his Highness's most honourable council, strictly chargeth and commandeth in his Majesty's name, that all his Highness's subjects, horsemen and footmen, within the bounds of the said West Marche, prepare their arrediness and come forward with 10 days victualls, as hath been appointed, so as they may be at Carlisle upon Monday next at noon, not failing hereof upon pain of death. Written at Carlisle this Tuesday the 14th day of June 1547.

GOD SAVE THE KING.'

And also :—

The Musters of the English East, Middle, and West Marches

In 1584 the musters of the English Borders are given in the *Border Papers* as follows :—

FOOTMEN OF THE WEST MARCH

Westmerland—

Archers furnished,[1] 1400 ; billmen furnished, 1300 ; able men unfurnished, 1342. Total, 4042.

Cumberland—

Archers furnished, 1100 ; billmen furnished, 1200 ; able men unfurnished, 1340. Total, 3640.

Middle Marches—

Able men certified without mention of furniture, 5277.

[1] See Appendix iv.

East Marches—

Furnished with jack and spear, 827.

Furnished with spear or lance only, 1347. Total, 2174.

AND OF HORSEMEN—WEST MARCH

Burgh Barony, Gillesland, Queene Haymes, Eske, Leven, Bewcastle, Holme Coltrim, Sark and the Debatable ground and Forest of Inglewood provide 468. And out of the Counties of Westmerland and Cumberland, 200.

THE EAST MARCH

Horsemen furnished, 267.

,, unfurnished, 546.

MIDDLE MARCH

Horsemen furnished, 819.

,, unfurnished, 1507.

As to the guardianship of the marches on either side it may briefly be summed up as follows:—

On the English Border there would be the garrison at Berwick-on-Tweed under the control of the Lord Warden, with a captain at Norham Castle and Wark as aides; to him the inhabitants on the southern side would owe Border service as far as the Hanging Stone on Cheviot. The Middle March had its separate Warden, who would reside possibly at Alnwick, as Sir John Forster, or at Harbottle Castle, as Sir Robert Carey, and who was responsible for

that great extent of country which took in the remaining portion of Northumberland.

His Deputy would probably reside at his own house, as did Sir Cuthbert Collingwood at Eslington, who was for ever at enmity with his chief, Sir John Forster, who held the middle Wardenship so long in the reign of Queen Elizabeth.

Acting also under the Warden of the Middle March would be the Keeper of Tynedale, often a Heron of Chipchase Castle (as was the Sir John who was slain at the Reidswire in 1575, on occasion of the famous Warden's meeting there), and the Keeper of Redesdale, a Hall sometimes or a Reed, as the 'Percy Reed,' for instance, of the well-known ballad who was murdered for the due discharge of his duty by the Croziers and the Halls, who held him at 'deadly feud.'

At Carlisle the Lord Warden of the Western March usually resided in the castle, though Lord Scrope in 1577 was in residence at Rose Castle, while the great 'Lord Dacre of the North,' in the time of Henry VIII., dwelt at his castle of Naworth. Acting with him along the Western March would be his Deputy, sometimes a Lowther, whose duty it would be to keep the fortress of Rockliffe and protect the embouchures of Esk and Eden, together with his Constable, and the Stewards and Bailiffs of various Baronies, the Captain of Bewcastle, who was appointed by the

Crown, and resided with a garrison at Bewcastle Castle, whose duty especially it was to stay the men of Liddesdale from raiding into England across 'the waste.'

On the Scottish side again the east Warden was usually a Hume, residing generally in Hume Castle; the middle Warden was generally a Ker, whether of Cessford or Ferniehirst, who frequently also held the Provostship of Jedburgh; while the western Warden was as a rule a Johnstone or a Maxwell, residing at Lochwood Tower, or Lochmaben, or Caerlaverock Castle respectively. He would seem also to have had control over Nithsdale, and Galloway, and the west part of Teviotdale, and on occasion he appears to have held therewith the Provostship of Dumfries.

The Keepership of Liddesdale

As Mr. R. B. Armstrong points out in his interesting *History*[1] *of Liddesdale*, 'the district was generally included in the Middle March,' but (owing probably to its always having been a distinct lordship and also on account of the extreme lawlessness of its inhabitants), it was during the greater part of the sixteenth century a separate charge, under the rule of a Keeper specially appointed by the Crown.

[1] *History of Liddesdale.* (Douglas. Edinburgh, 1883.)

In the first instance, Liddesdale was ruled by the Douglases as hereditary Wardens of the West March; later, when the Keepership was instituted, a Deputy was appointed, who seems *ex officio* to have been Captain of Hermitage Castle.

When the Keepership of Liddesdale had become a separate charge, the Lords of Liddesdale were often Keepers, as *e.g.* the Bothwells. Thus Patrick, Earl of Bothwell, was Keeper in 1528; James, Earl of Bothwell, also was Keeper, and resided in Hermitage, where, when he lay wounded, Queen Mary rode over from Jedburgh to see him. His nephew and successor, Francis, likewise served in this office. Finally Buccleugh, first Lord Scott, was appointed Keeper by James VI. and allowed rank as Warden.

It was always very difficult to get justice done for Liddesdale, since the fierce Elliots and Armstrongs dwelling within their 'swyres' were as a byke of hornets, and apparently from the following letter of Scrope's clerk under eight successive Keeperships no meeting had been held with the English Warden of the West March. 'All theise underwritten as is credible enformed, have ben Keepers of Lyddesdaile successyvelie, of whom their is nether recorde nor memorie so far as I can learne, for any meetinge for redres with any the Wardens of the West March as Gamelpeth for Lyddesdaill. The Lorde Burthick,

the Erle Bothwell, the Larde of Cawdor, the Larde Trachguars, the Tutor of Petcurr, Mr. Mychell Bowflower, the Lorde Herries, the Larde of Carminghell.'

Each Warden had his various officers, such as Land Serjeants and Water Serjeants (who apprehended delinquents and carried instructions), clerks to keep the Warden Courts, Setters and Searchers of the Watches by the Fords, and lastly his company or bodyguard of relatives, and those 'young bloods' of the Border who wished for the excitement and experience of fight or raid.

Some further particulars may here be given of the various other Keeperships on the Scots and English Borders which were subordinate to the Wardenries, as, for example, in the English Middle March Tynedale and Redesdale, and in the Scots Western March Annandale, the Keepership of which was in the hands of the Captain of Langholm,[1] 'who lyeth with a charge att the Castle of Langam.'

In Annandale, indeed, as one gathers from the orders given in Appendix, No. 11, of the *Leges Marchiarum*, there were various 'Warden deputies,' for the *House of Annand* was to be 'keeped with ane

[1] 'This captaine lyeth with a charge att the Castle of Langam, yf there be any breache or great rydinge in Scotland by English Borderers. And he is called the Keeper of Annandale: his service opposite against Beucastle, Eske and Leven or Bourgh at some tymes.' ('Musgrave's Report to Burghley,' *Calendar of Border Papers.*)

honest man and wise, *and he to be Warden Deputy*, and to hold with him xvi well-horsed men, and the men to be called the Household: for their sustentation every one of them to have 100 m, 4 nithsdale bolls of horse-corne.'

Further, it is ordered in regard to the keeping of the *House of Lochmaben* that it 'be keeped by ane wise and famous gentleman, and he to have with him five well-horsed men, and to be Stewart Deputy,' and also that 'the Lairds of Howmaines and Newbie be over the Helpers, Assisters, and maintainers of them.'

Further, the *House of Howdam* (Hoddam in Annandale) was 'to be keeped with ane wise Stout man, and to have with him four well-horsed men, and these to have 2 stark footmen servants to keep their horses, and the principal to have ane stout footman. . . .'

The continual unrest and the constant thievery in Annandale can be easily gauged by the appointment of these various officers, Stewart-deputes, Warden-deputes, Constables, Chamberlains and Captains.

On the English Border also we read of various subordinate officers, such as Constables, Land Serjeants and Captains. These Land Serjeants were the Warden's officers, whose chief duty seems to have been to apprehend thieves and fugitives in readiness for a Warden's Court or 'Day of March,' while the

'Water Keepers,' Water Bailiffs and Water Serjeants were bound to keep the 'entrance of all men without lycence out of either marche,' and had 'libertie at all tymes to enter the marches without licence, and to carry messages or letters betwixt the Wardens.'

In the case of the *Land Serjeant of Gilsland*, however, of whom frequent mention is made, more important duties were attached to this particular office.

Originally he seems to have been Chief Steward or Bailiff to the Lord of Gilsland, but when Queen Elizabeth took away from Lord William Howard and his wife (Lady Elizabeth Dacre[1]—'Bessie wi' the braid apron') the baronies of Burgh, Graystock and Gilsland, it was urged that Gilsland should be put upon the same footing as Bewcastle captaincy, which was a Crown appointment.

The following account of the Land Serjeants of Gilsland is taken from Thomas Carleton's report thereon in 1577 to Lord Burghley. (*Calendar of Border Papers.*)

'The Land Serjeaunt, then but a particular servaunt to the Lord Dacre, having in his absence the

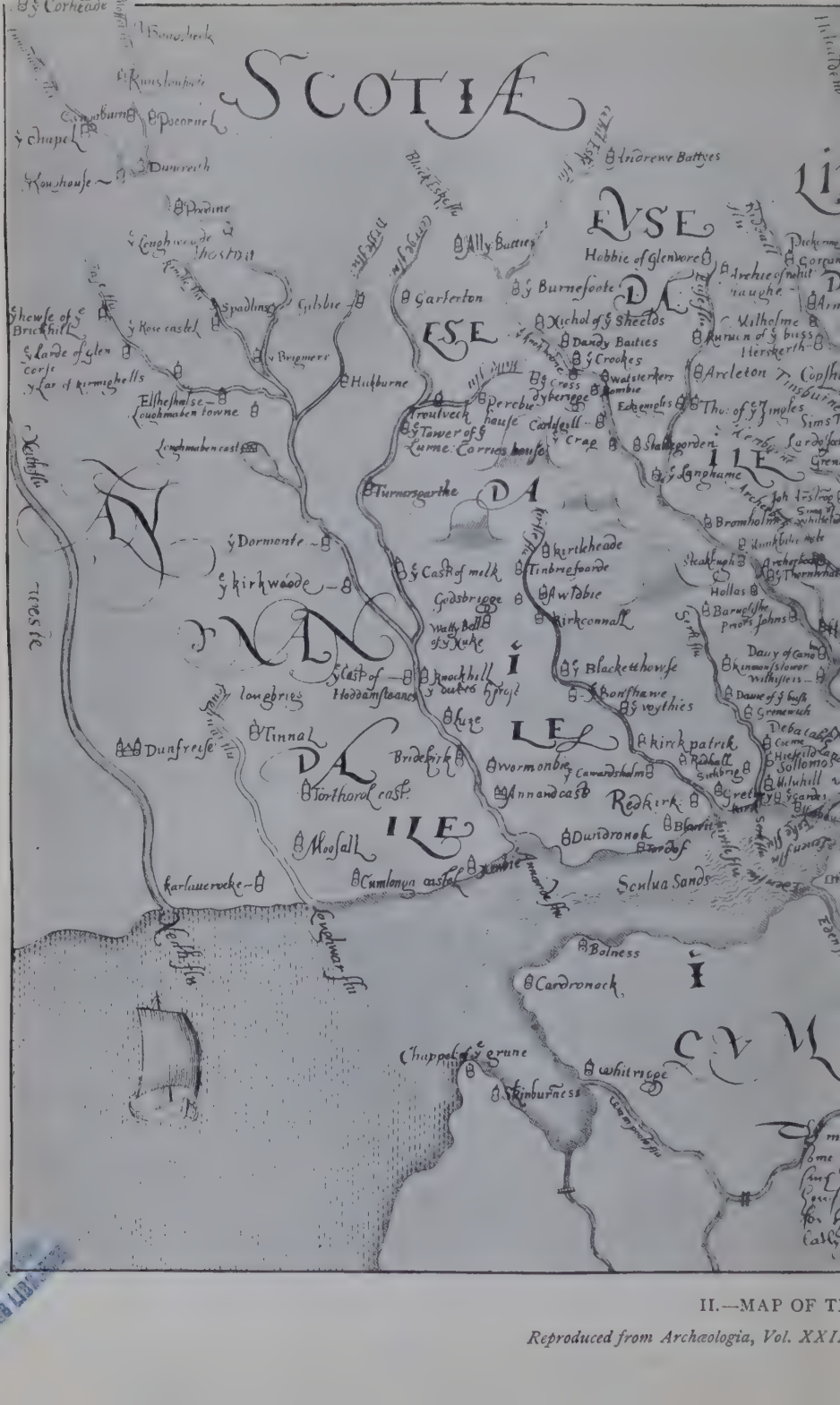
[1] 'Ultimately in 1601, the Queen permitted the sisters (the Ladies Dacre, co-heiresses of the last Lord Dacre, who had been married to the Earl of Arundel and Lord William Howard, respectively), to buy back their lands by a payment of some £10,000 each, and the long lawsuit was ended to the profit of the royal coffers.'

commaund and government of that whole barony of Gilsland, having for his maintennance the better to discharge that government, his chamber, stable, horse-meat, allowannce for his men, all the Lord's household servaunts, allwayes at the fewest 24 or 30, able and well-horsed men, at his call and commaundement. The land serjeaunt his dew fee for that office only five pounds, and his lord and masters countenannce, which was more than all the rest.' Apparently he (Thomas Carleton, Land Serjeant) lived at Askerton, 'a house of good strength and defence, and the only house in Gilsland fit for the land serjeant to dwell in.'[1]

As for the Captaincy of Bewcastle, we quote the following from the auditor's report to Cecil in Queen Elizabeth's reign. 'Her Majesty in her 32nd year, granted to Sir Simon Musgrave Knight, and Thomas Musgrave his son for the term of their 2 lives, Plumpton Park, with all rents, etc., being £168, 7s. 0d. per annum absque compoto seu aliquo inde reddendo. And, as I take it, they have moreover as incident and belonging to the said office of *Captain of Bewcastle*, all the rentes, demeane landes and tithes of Bewcastle, which I have hard to be better worth than £100 a year.'

Thus the auditor to Cecil.

[1] *Border Papers*, vol. ii. p. 575.



II.—MAP OF T

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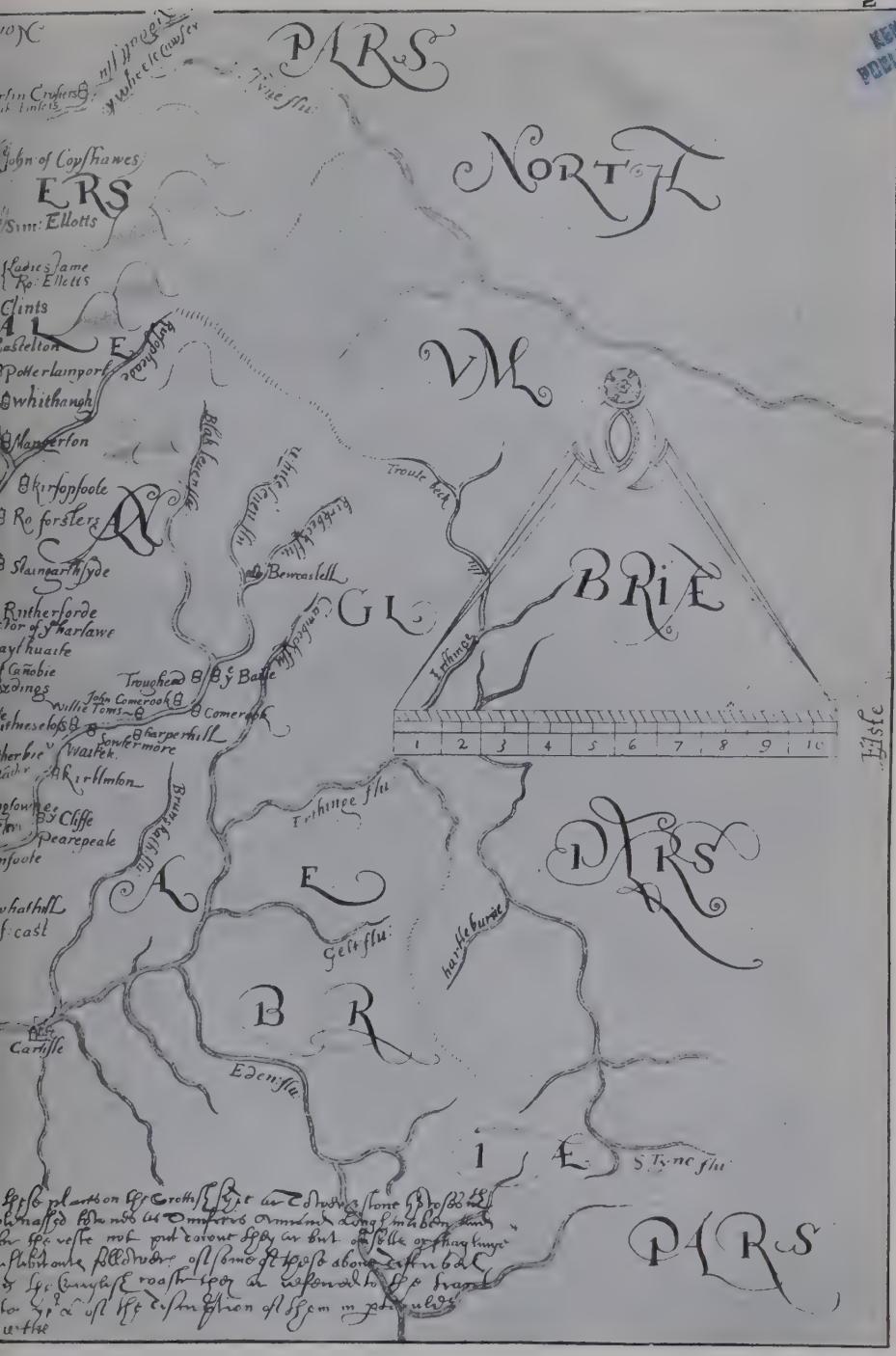

EBATABLE LAND.

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PART II

THE DEBATABLE LAND—ITS EXTENT, CUSTOM, AND FINAL DIVISION

'Dictus ager nunc variabilis, nunc litigiosus, nunc terra contentiosa vocari solitus, communi vero utriusque gentis vocabulo nuncupatur.'

RYMER, *Foedera.*

The very extent of the 'Debatable Land' seems to be 'debatable,' for various are the dimensions assigned to it; the measurement most commonly given is that of eight miles long by four broad, and the content of it—the land that lay between the rivers of Sark[1] and Esk—stretching from the Solway up to Kirkandrews, close to Canonby.

Yet Lord Dacre in 1550, two years before the division, reports as Warden of the English Western March that he thought it advisable 'for the better maintenance of the king's title and interest of the Debateable Land *to go over the same water* [of Sark] *into the same bateable*, before we either demanded, or granted any assurance.' Now as the meeting was appointed at Lochmabenstone, which is beside Solway in Dumfriesshire, near to Gretna Green, it is clear that Lord Dacre did not limit its extent to the lines of the Esk and Sark rivers.

The ancient extent of the *Debatable Ground*

[1] Viz. the White Sark; a small confluent that flows into Sark by Solway Moss is termed the Black Sark.

before the division is thus given by Burn and Nicholson, vol. i. p. 16, from boundaries as set forth in an old roll. 'Beginning at the foot of the White Scyrke running into the sea, and so up the said water of Scyrke, till it come to a place called the Pyngilburne foot running into the said water of Scyrke, and up the Pyngilburne till it come to Pyngilburne know, from thence to the Righeads, from the Righeads to the Monke Rilande Burne, and from thence down Hawenburne till it fall in Eske, and through Eske to the foot of Terras, and so up Terras to the foot of Reygill, and up the Reygill to the Tophous, and so to the standing stone, and to the Mearburne head and down Mearburne to it fall in Lyddal at the Rutterford, and down Lyddal to it fall in Eske, and down Eske to it fall in the sea.'

They add, 'it was in length 8 computed miles of the country and in breadth 4 miles,' but from where the Sark flows into Solway to Raegill [Reygill] is nearly ten miles, and the breadth from Raegill to the Rutterford on Liddel is not far from five miles, and this would seem to be the more correct computation, for after the division between England and Scotland the English portion—measuring by Blaeu's map from west to east—from Sark to Esk—is some three and three-quarter miles, and in length—by the Esk to the Solway—is some four and a quarter miles.

In the survey of 'the Debateable[1] and Border Lands adjoining the Realm of Scotland,' taken for James I. in 1604, there is 'an Abreviate of the Survey of the King's mat^s^ lands, called the Debateable lands, inhabited by the Grahams, belonginge to and lyinge within ye Realme of Englande; the w^ch^ are bounded by ye river of Sark on the west, the Scotishe dike on the North (bothe wch are marches and bounders betwixt ye 2 realms of Englande and Scotland), the ryver of Eske upon the East, and an arme of the sea upon ye South, wch is called Selwaie Sands. The wch ground extendeth in circuit 21 miles, in length 5, and in breadth neere 3 miles, and conteyneth 7·403 acres accordinge to Statute measure.'

Again, there is printed in Armstrong's *History of Liddesdale* a very interesting document—in which, by the way, the extent is set down as ten miles by four, entitled, 'A Rememberance of an order for the Debatable Lannde, if the sayme shalbe thoght goode, to the Prynce of bothe the reallmys of Inglande and Scotlannde by the Wardans of the weste Marches of Inglannde annde Scotlannde, withe the full advyse and opeanyon of dyvers gentlemen Borderers off bothe the sayde west marches, as the articullys off the same insewethe'—in 1537.

[1] Additional MS., British Museum. See note p. 43 above

From this we learn that previously to the division the custom had been for both Scots and English to pasture their several cattle thereon 'for bytt off mouthe betwene son and son,' viz. from sunrise to set, and 'withe owtt a stobe or stake,[1]' that is, without setting up any residence therein.

But Scots and English alike had come 'to hold stob and staik' therein, and when they who were inclined to England were molested by the Scots Warden the English Warden naturally took upon himself their protection. Thus, when Lord Maxwell threatened to raze Sandie Armstrong's house with gunpowder, Lord Dacre heaped peats and turfs within and about it and set them on fire to prevent the other's intention.

This ancient custom in regard to the disputed tract is fully set out by the English Warden, Lord Dacre, in his letter to the Scots Privy Council, 6th July 1517 :—

'My Lords there is a grounde called the Debatable grounde, lyeing betwene the realme of England and Scotland, wherein there is no strife for the boundes of the same; but it is wele knowne by the subjects of bothe the realmes, and allweyes has been used and accustumed to pasture upon the same grounde with

[1] See Jamieson, *Scottish Dictionary*, 'Stob and staik—to hold stob and staik in any place, to have one's permanent residence there.'

bit of mouthe, from the sonne rising to the sonne setting, withall manner of cattell, for the subjects of bothe the realmes.

'And if any subject of ayther realme wilfully will stub or stake, or kepe any cattell under cover of night, it is and always has bene at the likkes of the Wardenis, lieutenants and subjects of ayther realme, fyndering them greved, to brenne, destroye, waiste, take and drive awey all suche goods and cattell as there shalbe founde so wilfully kept under cover of night.

'And if it fortune any of the subjects of ayther realme soo wilfully keping there goodes and catells under cover of night upon the same Debatable grounde, shall not forfaite there goods taken upon the daylight, as afore said, but it is leyful to brenne the houses and to take the goods and catelles and persons prisoners being within the house upon the daye light.

'And if the men and goodes got owt of the houses upon the said Debatable grounde, they are fre, and no forfaite made, but the howses to be brent, and the goods within them to be forfaiete.

'And if it fortune any subjects of ayther realme to carie awey any of the said houses, or any wodde, gres, or corne growing upon the said Debatable grounde, lyeing upon wanes, carts, or horse bakks, takin with the cariage upon them, within the Debatable grounde, is forfaicte to that subject that so arrests them. But if so be that the cariage be out of the wane, carte or

horsebakks or the seisure be made, then there is no forfaicte done.'

Now as the English Warden insisted upon claiming the land in question as English, and the Scots Warden stoutly resisted the claim, a deadlock ensued. 'For neither will I,' wrote Lord Dacre in 1550 to the Privy Council, 'suffer the Warden of Scotland to answer for it, because I will not allow it to be Scotland, nor will they on the contrary consent that it shall be England.' Finally, when several 'Batablers,' such as Sandie Armstrong, and several of the brethren and sons of Richard Greyme, and divers others, had threatened to turn Scots unless England would definitely 'aid them as occasion required'—'a loss to England and a continual source of disorder on the marches'—a division of the 'variable ground' was finally agreed to.

The following is the reference to this disputed ground in the *Leges Marchiarum*, three years before the division.

By the indenture of 1549 in the reign of Edward VI. 'it was covenanted, concorded and concluded, that the land variable, common of both the People, called the Debateable ground, which lieth between the west marches of England and Scotland, shall be put and set in the same estate, and shall

remain (inasmuch as belongeth to the use thereof), even as it hath been accustomed to be, and was before the beginning of the wars.

'So as the Lieges and Subjects of both the Realms, now inhabiting or having houses upon the said Debateable ground, may have power and liberty (until the Feast of St. Michael the Archangel next coming, after the date hereof) to dwell there, without Prejudice of this Article, and to use and enjoy the same, during such space of time they may to their best Commodity remove themselves, their wives and Children, goods and Cattel, and other their things (every of them) into his own country; unless it be otherwise in the mean time, of the said Variable Ground, by good ways and means agreed and concluded between the Priners aforesaid. And, after the said Feast, if any of either country of the said Inhabitants do in anything contrary to this Article, then (by the Warden or his Deputy, without respect), they shall be thrown out and duly punished therefore, according to the Laws of Marche.

'Provided, that whosoever refuseth to obey the Commandments of the Wardens of both Marches aforesaid, and the Covenants taken by common consent for the good rule thereof, that they occupy not the Privileges of the small delay aforesaid.'[1]

[1] *Leges Marchiarum.*

Finally, then, it was agreed upon between the two realms that there should be a division of the variable ground between England and Scotland by the Lord Wharton and Sir Thomas Challoner on the part of the King of England, and Sir James Douglas of Drumlangrig and Richard Maitland of Lethington on the part of the Queen of Scotland.

These Commissioners, assisted by an envoy from France, 'made their award Sept. 24th, 1552, setting forth, that whereas the inhabitants of the western part inclined more to be subjects of England, and the inhabitants of the eastern part inclined more to be subjects of Scotland, they therefore award the western part of the said debateable land to the King of England, and the eastern part thereof to the Queen of Scotland; to be divided by a line drawn across from Esk to Sark and a square stone set up at each end with the arms of England on the west thereof, and the arms of Scotland on the east side.'[1]

And thus the 'terra contentiosa' of old time—'the sewer of abandoned men—who, freed from the fear of punishment or laws, lived by theft and spoil'—was divided for all time between England and Scotland—England obtaining the western portion or parish of Kirkandrews and Scotland the eastern or parish of Canonby.[2]

[1] *History of Cumberland and Westmorland*, vol. i. p. lxxxi.

[2] In sundry 'articles concerning the Monastery of Canonbyholm in the

The following quotation from Rymer's *Foedera* will show with what care the delimitation was carried out.

'*Ac ut melius et certius pars haec occidentalis ab altera discernatur, conventum et conclusum est inter nos commissarios et deputatos praefatos, ut in ipso utrius partis discrimine, trames linearis rectus transversim ab Esk ad Sark fluvium ducatur, fossa vel sulco vestigium ipsius denotante; ac praeterea, singulae pyramides lapide quadrato singulis ipsorum Esk et Sark fluviorum ripis interius imponantur, in ipsis potissimum (quoad ejus fieri potest) locorum punctis construendae ac collocandae ubi linea seu trames ille transversus hac illac extendetur. Quos quidem locos, quo planius dinoscantur, et si quo vetustatis aut doli mali vitio pyramides corruerint, nihilo secus locorum vestigia ad ipsarum reparationem innotescant, in hunc modum hinc describendos putavimus: Locus igitur pyramidi Esk fluvii ripae imponendae is esto, ubi fluvii ipsius cursus sinuose incurvatus est, ad campi ejusdem (vulgari sermone vocati Dimmis. Daill) latus occidentale qua torrens seu rivulus quidam vicinus (vernacule nuncupatus Dimmis-daill syke) in fluvium jam dictum praecipitat.*

North cuntre to prove yt to be Englishe and not Scottishe,' in 1531 the prior is said to pay 'to the handes of the Captain of the Castell of Carlill' xiiis. ivd. This, the English insisted, was rent, but the Scots replied that it was 'for custome of the inhabitantis within Cannonby.' See Armstrong, *Liddesdale*, p. xxxii.

'*Similiter, pyramidi Sark fluvii quae imponetur ripae is esto locus, qui clivo rubro situs est, e regione loci vocati Kirkrigg in Scotia paulum supra le Eatgyw'. ubi vicissim Sark fluvii alveolus in sinus curvatur.*'

Upon these pyramids the arms or badges of the said sovereigns were to be sculptured; '*ita scilicet, ut quod latus utriusque pyramidis quod occidentem spectat, dicti serenissimi Angliae regis insigniatur armis, quodque orientem respicit praefatae illustrissimae reginae Scotiae armis condecoretur: atque in hunc modum honori principum bene de patria meritorum, tum etiam commodo rudioris populi, quo melius ex istis signis divisionis hujus discrimina percipiant, consultum esto.*'

It might be mentioned in this connection that there were along the Border certain small 'threap lands,' 'debateable,' or disputed tracts, which seem to have remained doubtful even up to the time of the Ordnance Survey. Thus from Phillips's memorandum quoted above, we learn that there were in the East March 'three parcels' of ground in dispute, as, for example, 'the mid rigg [of 100 acres] lying nere to the cornefeldes of Warke and Carram—quietlie occupied and plowed by the tenantes of Carram till Flodden Feld, at what time the decay of the Castle of Warke caused the decaye of the towns of Carram

and Warke, so as it lay unplowed but occupied as pasture by the tenantes of the said townes till anno 30 of Henry VIII. that they did sow it with otes, which the Wardens of the East and Middle marches of Scotland by theyr Kinges commandment, as the Scots affirme, with a great power destroyed, challenging the same ground to be in plea between the realmes and therefore to be pastured uppon by both, as it hath continued ever since.'

And again, there seems also to have been a debatable 'Fish garth' on the Esk, which is specially mentioned in sundry treaties of Henry VII. and VIII., and set on one side or exempted as a source of quarrel between England and Scotland.

'Si rumpat vel distruat eundem, pro non attemptato reputabitur, et nihilominus alia attemptata quaecumque reparabuntur sic quod Reparatio aut Destructio dictae le Fisshe garthe non impediet Reformationem aliorum attemptatorum nec introducet Ruptionem praesentis Pacis seu confederationis.' (Rymer, *Foedera.*)

CHAPTER V

PART I

'THE TREATIES, TRUCES, LAWS AND CUSTOMS OF THE BORDERS'

'Now, in the legends of Mabel, the Scottish nation was ever freshly remembered, with all the embittered declamation of which the narrator was capable.

'The inhabitants of the opposite frontier served in her narratives to fill up the parts which ogres and giants with seven-leagued boots occupy in the ordinary nursery tales.

'And how could it be otherwise?

'Was it not the Black Douglas who slew with his own hand the heir of the Osbaldistone family the day after he took possession of his estate, surprising him and his vassals while solemnising a feast suited to the occasion?

'Was it not Wat the Devil who drove off all the year-old hogs off the braes of Lanthorn side, in the very recent days of my grandfather's father?'

SIR WALTER SCOTT, *Rob Roy.*

IN Bishop Nicholson's *Collection of Leges Marchiarum* the first statutes given are those said to be drawn up by twelve English knights and twelve Scots knights in the reign of Henry III., 1249, presided over by the Sheriff of Northumberland and the Sheriffs of Berwick and Roxburgh respectively.

The first name on the English side is that of Robertus de Clifford, but as Robertus de Clifford

was not born till 1273, Burn and Nicholson conclude from this and other internal evidence, as, for example, the absence of the names of either king, that it is a manifest Scots forgery, the occasion of which might lie in the destruction of all the Scottish records by Edward I., and the consequent desire to create a document to prove their country's independence at a time when it was denied by England. It should be noted, however, that the editor of the *Acts of the Parliament of Scotland* writes as follows in his preface (vol. i. p. 43, red ink numerals) concerning the Act:—

'It is here printed without alteration from the Berne MS., a nearly contemporary authority. It is found in many of the law manuscripts, and forms the first of a curious collection of Border Papers in the State Paper Office.

'The copies used by Bishop Nicholson must have been very faulty.'

The Act itself is headed as follows:—

'The year of grace 1249 gadderit togidder at the Merchis the Shereff of Northumberland for kingis' party of ingland and the Sherefs of Berwick, Roxburgh and Edinburgh on the kingis' party of Scotland for to know the lawis and the customs of the merchis be xii knychtis of ingland and 12 knychtis of Scotland.'

And further, Dr. Neilson writes thus to the author :—

'For my part I take the confusion of witnesses with a light heart. The imputation of forgery is at the very worst only an extreme form of saying that the witnesses are not easily possible at any one time, but this is no unusual thing : a conflate text is often found in the Middle Ages and witnesses get run together when there is no doubt that the actual document itself is genuine and beyond challenge. So for my part I take the confusion of witnesses to the Leges with a light heart.'

We now give a translation of these first Border Statutes as printed by Bishop Nicholson in his *Leges Marchiarum.*

'In the year of grace one thousand two hundred and forty-nine on the festival of Saints Tiburtius and Valerianus there came to the marches for the purpose of founding and observing the Laws of the Marches the Sheriff of Northumberland on the part of the Lord the King of England and on the part of the Lord the King of Scotland the Sheriffs of Berwick and Roxborough that the laws and customs of the marches might be acknowledged by twelve knights of England and twelve of Scotland under firm oath.'

English Knights.	Scottish Knights.
Robertus de Clifford.	Adam de Earth.
Robertus filius Radulphi.	Radulfus de Boukle.
Robertus Malefante.	Willielmus de Northinton.
Robertus de Ulfester.	Robertus Bernham, Mayor de Berwick.
Willielmus de Burnvile.	Adam de Norham.
Willielmus de Scremerston.	Henricus filius Walden.
Willielmus de Herington.	Henricus de Brade.
Robertus de Glendale.	Richardus Holkerton.
Sampson de Coupland.	Robertus de Durham.
Willielmus de Cookperte.	Aymerus de Elmsley.
Henricus filius Godfridi.	Adam de Newbigginn.

Here follow the statutes of the said four and twenty knights. (To make up the number of twenty-four knights one must suppose that the Sheriff of Northumberland and the Sheriff of Berwick or Roxburgh also swore.)

'*Firstly*, all of these twenty-four asserted together, that if any evil-doer dwelling in Scotland, whether man or woman, whether a feudal tenant or not, shall have been guilty of homicide or any other offence whereby debate or contest may arise, he shall be tried therefore only on the march of either realm.

'If the defendant dwell beyond Rede he shall be tried at Ridingeburn.[1] Redesdale and Coquetdale must be tried at Campaspeth according to the laws and customs in use between the two realms.

[1] The Reddanburn, which flows into Tweed from the south beyond Carham, and some six miles west of Coldstream. 'Gammel's path' (the old path, cp. Danish *gammel*), as marked on the Ordnance Survey, is the track of the old Roman road that led up from Bremenium (High Rochester) Camp to Ad Fines Camp (Chew green), at the head of Coquet.

'*Secondly*, they asserted that all men between Totnais (Totness) in England and Caithness in Scotland can rightly—according to the customs of the said realms—be called to the Marches for combat, with the exception of the persons of the Kings of the said realms and of the Bishops of Saint Andrew and Dunkeld.[1]

'*Thirdly*, they asserted unanimously that if any one whether vassal or bondsman of Scotland shall have fled within the realm of England, with or without his cattle, wishing thus to escape from his Lord, he must be brought back to Scotland—if he is prosecuted within forty days after crossing the Marches by his lord or bailiff—without any hindrance on the part of England on oath given, and, conversely, the like to hold good of an English fugitive.

'But if the lord prosecute not within forty days he shall never recover his man except by warrant from the King in whose realm he has sought refuge.

'And if after forty days he is found within the realm which he left he may be taken, *unless he is a bondsman*,[2] by his lord on the oath of six men in addition to his lord's.

'*Fourthly*, they asserted, that if any native[3] of

[1] *The Acts of Parliament of Scotland*, vol. i. p. 414, etc., give 'Donelmensis' and 'Duresme,' sections 2 and 5.

[2] *Nisi fuerit nativus.* The Rev. G. Ridpath, commenting on this in his *Border History*, suggests that in the case of a bondsman his lord's oath was not necessary.

[3] *Nativus*, translated here as 'native.'

England or Scotland shall be accused of debt he shall provide a pledge for forty-five days by means of *inbrocht wood and utbrocht wood*[1] (sureties of his own, and the other, realm), and they shall redeem the debt within the next fifteen days. And if by then the debtor shall not have paid this off his pledge may be taken and held until full satisfaction shall have been given for his debt.

'But if he denies the debt he shall clear himself at the Marches within fifteen days by the oath of seven men, his own included. And the same, if the debtor shall make default, holds good in regard to the pledge.

'If he acknowledges his debt and has no goods wherewith to pay he shall purge himself by his oath on the ground that he has no more in goods than five shillings and fourpence, and further shall swear that he will pay his debt as soon as he shall save or obtain the amount, his food alone being immune.

'*Fifthly*, they asserted that all accusers on either side shall swear for themselves, except only the two kings and their heirs, and the Bishops of Saint Andrews and Dunkeld.

'For the King of England, his standard-bearer and his constable shall swear. In the same way for the King of Scotland and the Lord Bishop of Saint

[1] Wood = wed (*vadium*), a pledge.

Andrews the presbyter of Weddle — shall swear,[1] and for the Lord Bishop of Dunkeld the Prior of the Isle.

'*Sixthly*, they asserted that no one can act by attorney in making oath at the Marches in a quarrel wherein life and limbs are involved save only with the consent of either party. The two kings and bishops only being excepted, as above said. Default will invalidate the cause forever whether for prosecutor or defendant.

'*Seventhly*, they asserted that if a quarrel takes place on the Marches between the two countries and this between a prosecutor and defendant on a matter of life and limb, then, supposing that the defendant shall have died within fifteen days, within the statutory time, his body shall be brought to the Marches at the day and place within the appointed parts, *since no man can be essoigned by death.*[2]

[1] Wedhall or Wedale. He was the bishop's vicar in that parish, so the Rev. H. A. Wilson of Oxford kindly informs me, also that the Insula (isle) mentioned was probably Inchcolm, which was a *priory* till 1235 or later, and had a close connection with the early Bishops of Dunkeld. Ridpath in his *History* suggests Lochleven.

[2] Even so late as 1597 we hear of a pledge's body being brought—though a corpse—to the march.

In Sir William Bowes's 'Declaration from Barwicke, Oct. 9, 1597,' it is stated that at the meeting of the Commissioners of both realms for delivery of pledges at the next ford near Norham, 'Sir William pressed their receipt of the Englishe pledges all there presente, though one of the number were dead, yet was he brought and presented to the place.' See *Calendar of Border Papers*, vol. ii.

'And if the prosecutor delaying shall not have appeared at the same appointed time, the defendant must make his way to the Marches and must take the pledge of Wardsheill[1] (trial by combat, hand-

[1] Manum de Wardshiell (pledge of Wardshiell).

So the passage runs in Bishop Nicholson's *Leges Marchiarum*, but in the *Acts of the Parliament of Scotland* (see vol. i. p. 414, red ink numerals, Record Edition), these words are given: 'Debet accipe-*handwarsil* de tribus baronibus'; and opposite them this translation: 'And the appellour cum nocht to the merchis at the day set the party dependant sall gang to the merchis and tak thair 3 borowis [sureties] that is to wit 3 men witnessing that he then sufficientlie at day set apperit and that provit be thame of that clame he sall gang quite for evermair.'

Thus 'Wardshiell' or 'handwarsil' seems to mean wager of battle (cp. the Border word—warsil—warsell still in use), and the plain meaning seems to be that the defendant having attended at the fighting ground and finding the appellant not there should be quit of the claim against him for ever after if he took three witnesses of his due presence there.

Furthermore, as Dr. Neilson points out in his *Trial by Combat*, 'If any of these witnesses proved a backslider by refusing his evidence afterwards, if the last claim happened to be renewed, the person aggrieved might bring defective memory to task by fighting any one of the witnesses, or, if need be, all the 3.'

There is a further reference to this term Handwarsil or 'Handwarcel' mentioned in the case of one Henry Scot in the *Calendar of Documents relating to Scotland* (vol. ii. p. 59), and is there indexed as *Handwarcelle, a March custom in Cumberland after a robbery.* This document was so much mutilated that it was difficult to make out the real procedure involved, for it appears from one passage that the appellant might, if he liked, pursue the robber at common law.

On this occasion it was the king himself who, desiring to have justice done in the case of this Henry Scot (who had professed, and was ready to place himself on the country and to purge his innocence), commanded 'the Sheriff to keep the matter *in statu quo* till his next arrival in these parts, and then to assemble a jury of the county to enquire into the law and custom of the March.'

An Inquisition was held at Carlisle in the eighth year of Edward I. before certain knights, the mayor and sundry citizens, 'who say, respecting the laws and customs in use in Cumberland, that from a time whereof no memory exists, if any robber in the kingdom of . . ., he must quickly within the day or night after the robbery, according to the distance of the

warsil), from three Barons to testify that he has properly appeared on his day. And this being approved by them he shall be forever freed from that charge. And if by chance any one of the three refuse to testify he may have a combat. The same rule applies to the prosecutor.

'*Eighthly*, they asserted, that if any Scots thief shall have stolen a horse in England, or oxen, or cows or anything else and leads the same away into Scotland the owner, in whatsoever place he finds his gear, shall recover it in the Court of the Feudal Lordship where he has found his gear.

'And this he shall recover in the aforesaid Court by the oath of six men—his own making the seventh—unless it chance that he who retains the gear says it

place where committed [go to?] Brunscaythe on the English side, and to Rocheland on the Scottish side, and there publish to them the robbery committed on him, and have his evidence. . . .

'And if he finds him within 40 days, he must sue him according to the law and custom of the March, as follows:—a writ from the Sheriff of Cumberland to the King of Scotland's Sheriff of Dumfries, that he let him have "Handwarcelle" regarding the robbery (?). . ., that he answer to him on whom the robbery was committed, and defend himself by his hand.' Part of another section runs, 'And he who is of the English realm shall have a lance, a sword, and a targe, if he wishes.'

This would correspond with the ordinary law of England at that time. See Forsyth, 206, who says, 'In the time of Bracton (middle of the thirteenth century), the usual mode of determining innocence or guilt was by combat or appeal. But in most cases the appellant had the option of either fighting with his adversary or putting himself on his country for trial.' The exceptions being murder by secret poisoning, and certain circumstances presumed by the law to be conclusive of guilt. See article, 'Jury,' in vol. xv., *Encyclopædia Britannica*, Cambridge Edition.

is his own, in which case a contest may issue on the Marches.

'*Ninethly*, they asserted that if any one shall be indicted—whether Scots or English—for life and limbs at the Marches on a charge of robbery, theft or homicide, the pledges—if the defendant is worsted in contest—shall not be responsible for more than the amount set forth by the prosecutor in his claim.

'*Tenthly*, they asserted, that if any evil-doer, who has entered into any part of the other realm, shall there wish to have peace he shall have it from those who can give it, namely, from the High Sheriff, and if by chance he cannot find the High Sheriff, he can receive peace at the first church—the bells being rung—and there he shall be in peace until he shall have peace through the High Sheriff. And if before he has peace he is apprehended he shall be led off without any hindrance.

'*Eleventhly*, they asserted, that if any one shall claim any mare, ox, cow or pig, or any other animal in either England or Scotland, as his own he shall have the benefit of all the delays agreed upon between the realms and the full term of days in the cause. If he shall wish to come off without fighting, and finds that the gear is not his own, he shall on the appointed day drive it back to the Marches, and send word to the party against whom he claimed the gear that the

horse is his and shall drive it into the water of Tweed or Esk.[1]

'And the defendant shall be quit of that claim or charge. If the animal is drowned before it has crossed the stream of water (mid-stream) he shall be responsible for it according to March custom, and the same holds good of an ox, cow or pig or anything else, save baggage, of which there is no mention.

'*Twelfthly*, they asserted, that no Englishman can test an accused Scot by means of witnesses—the converse also holding good—save only by the body of a man, and thus many[2] contests can arise in the disputes that have occurred or are likely to occur between the marches.

'*Thirteenthly*, it must be known that if any one happens to be in the realm of England or Scotland, or conversely, according to the Laws of the Marches, who claims a debt in the other kingdom where he remains, he must advise the clerics, if it is a cleric who is in his debt, the knights, if it is a knight, the burgesses, if it is a burgess, and by them the case must be decided and not by others.

'Further, they agreed, that Inburghe and Outburghe (magistrates within and without burghs) shall

[1] The Esk was then the boundary line. The 'Debatable Land' came into being later owing to English encroachments or invasions.

[2] *Nulla* in text, but this makes nonsense. Read instead from other versions *multa*.

have power to distrain either country so that the above-mentioned customs may be inviolately observed between the two realms.'

From Article 8 in the foregoing list of laws, it is plain that no Warden Courts can have existed at this time, for the pursuer has to recover his goods in the court of the fee in which he finds them. There is here no assize or jury—as in the later laws—to 'foul' or 'clear' the bills; the method of justice is as simple as possible, proceeding by oaths and ordeal of battle.

Indeed, the whole procedure derives from an earlier epoch than that of the earliest Lord Wardens; mark the ancient methods of compurgation (*per sacramentum sex virorum et se septimo*), the sureties or pledges, the disallowing of witnesses, and the final appeal to the sword, which decides the cause by the success or defeat of the defendant in single combat[1] (*duellum*). As Dr. Neilson points out in his *Trial by Combat*, it was 'a root principle of March law that there could be no proof by witnesses—there could only be probation by the body of a man.'

[1] Trial by combat was not formally abolished in England till 1819. In the previous year a defendant, one Abraham Thornton, accused of manslaughter, claimed to defend his cause 'by his body,' and threw down a gauntlet in accordance with the centuries-old duel of law. In the event the appeal was withdrawn, Thornton was set free, and the ancient law was repealed.

POSTSCRIPT

TRIAL BY COMBAT, OR THE SWORD AS JUDGE

'The Sword
Singing—
The voice of the Sword from the heart of the Sword
Clanging majestical,
As from the starry-staired
Courts of the primal Supremacy,
Her high irresistible song.'

W. E. Henley.

The ancient procedure disclosed by this earliest 'Law of the Marches' is then of the greatest interest, as well from the historic as from the romantic point of view. Since from the earliest times, according to the inquest held by Cressingham at Carlisle in 1292, this duellum or trial by combat on the Border had had to decide the issue on matters touching life and limb between Englishmen and Scotsmen.

None might escape this ordeal if accused—none save the Kings of England and Scotland, and their heirs, and the Bishops of St. Andrews and Dunkeld or Durham—and at the four march forums or battle grounds of Camisford,[1] opposite Norham on the East Marches; Redam, or the Riding burn, that runs into Tweed a mile or more west of Carham, for the Middle Marches; Gammelspath [viz. the height of Watling

[1] Identified by Dr. Neilson with a ford opposite to Norham. Hamisford is an alternative reading, and Dr. Neilson gives as reference, p. 243, Twysdem's *Decem Scriptores* (*sub anno* 1121), 'Ranulphus Dunelmensis episcopus castellum apud Northam incepit, super ripam Twedar, in loco qui Ethamesforda dicitur.'

Street above Ad Fines Camp] for Coquetdale and Redesdale, and Sulwath or 'Solway'[1] for the Western Marches, the fight between the appellant and defendant of the different nations was bound to take place.

No proof, said the stern Border customs, can be admitted by an Englishman against a Scot, or by a Scot against an Englishman, 'save only by the body of a man,' *nisi tantummodo per corpus hominis*; whence, continues the same terse code, it is that many combats take place out of the various disputes that arise upon the Border. Even when, as in the case of sundry shivering ecclesiastics appealed by the opposite side, the defendant preferred to be represented by a champion, he was liable to be beheaded in the event of his champion's defeat, as happened indeed to the unfortunate Prior of Lideley,[2] who presumably must have failed to obtain sureties for the claim made against him.

[1] Bishop Nicholson's *Lex* gives only two meeting-places, but the *Acts of Parliament of Scotland* give four, as above stated. As to the battle ground of Sulwath (the act says 'the Sheriffs of Carlisle and Cumberland must answer at Sulwath—apud Sulewath'—which Dr. Neilson, with great learning and research, identifies with the Lochmabenstone beside Solway, near to Gretna Green), see his *Annals of the Solway* (Maclehose. Glasgow). Therein he seems to have established his contention that Solway meant originally the 'muddy ford'—over Esk, at that time the boundary between England and Scotland. Fordun styles it 'Scotiswath sive Sulwath'—Solway being a comparatively late term.

[2] See Ridpath's *History of the Border*, p. 98, for a remonstrance of the clergy of England, presented to the Legate Otho in 1237, for procuring redress from the king of several encroachments on their liberty.

Idealising the past, one might imagine the youthful champion like a ruddy-cheeked David, ever triumphant over the oppressor upon the windy heath of Gammelspath, under the shadow of Thirlmoor, overlooking the old Roman Camp of Ad Fines, but in stern reality the brutal Bonthron or fearnowt Armstrong would usually be victor, even though his cause was based upon guile, avarice, or lust of revenge.

> 'His strength is as the strength of ten
> Because his heart is pure,'

sang Lord Tennyson in his *Idylls*, but 'the Song of the Sword' of another poet more justly based the 'Court of the primal Supremacy' upon the stark strength of the sword-bearer.

> 'Glittering and keen
> As the song of the winter stars,
> Ho! then the sound
> Of my voice, the implacable
> Angel of Destiny!
> I am the Sword.'

The sword then in these early days decided the law plea before the grim Borderers in the Areopagus of the moorland, and in the event of defeat the vanquished must endure loss of goods, fame, and sometimes life itself.

We return, however, to the unfortunate Prior of Lideley, who, as we surmised above, must have been unable to obtain sureties or pledges, for only in that

event, and a subsequent conviction by duel, would he be liable to be handed over to his accusers 'to do justice concerning him at their will'—*liberaretur quaerenti faciendo de ipso voluntatem suam.*[1]

Now, as is clear from the case of Henry Scot[2] and John of Wyncheles, an accuser had only to make a preposterous claim for damages to debar the defendant from obtaining sureties.

This evidently gave a swash-buckler, or 'a man of Belial, swollen with food and wine,' an unfair advantage, and it was this custom that Edward I. 'repudiated' ('reprobavit'), about 1280. For the defendant seemingly, if appealed, was bound to fight—to take *handwarcel*—but he had also to find security—*et nichilominus inveniret securitatem quaerenti de dampnis praedictis*[2]—and if he could not, then the accuser had his will with him. The

[1] 'Henry Scot had bought a horse at the fair of Carlisle, and he complained to the Sheriff of Cumberland that John of Wyncheles had appealed him of theft by law of March, according to which Henry, if unable to find securities to pay John whatever he claimed as damages, even if it were £1000, must undergo judgment as lawfully convicted. An inquiry was ordered, and the inquest declared that there had been a custom from a time whereof no memory existed, that a Scotch robber must be sued within 40 days, and that this pursuer was entitled to *Handwarcel* with spear and sword and targe. The Record of the inquest is somewhat mutilated, but its fragments suffice to make it clear that the juries of 1292 accurately stated what had been the law before 1280, that an accuser who could find no securities was liable to be handed over to his accusers to do justice concerning him at their will.' (Neilson, *Trial by Combat*, p. 130.)

[2] *Historical Documents relating to Scotland* (Stevenson), vol. i. p. 357: 'Extracts from the Roll of the Justices Itinerant in the Courts of Cumberland, having reference to the affairs of Scotland.'

passages referring to the matter are very obscure, but Edward I. seemingly must have reduced the amount of security demanded to the actual value of the damage.

PART II

A SHORT SUMMARY OF THE BORDER LAWS

We give now a short summary of the Border Laws which follow in Bishop Nicholson's collection of the year and reign as under :—

1449.[1]	Henry VI.	1464.[1]	Edward IV.
1533.[1]	Henry VIII.	1549.	Edward VI.
1553.	Queen Mary.	1563. 1596.	Queen Elizabeth.

These early indentures[1] are, in the first instance, Truces and Abstinences from War between the Kings of England and Scotland, and the chief officers responsible are termed Conservators of the Truce, with whom are joined various knights and all the Admirals of the Sea and Wardens of the Marches. In the indenture of 1449 the Conservators 'ordain and conclude

[1] These are all written in mediæval Latin: the text is very corrupt, sometimes impossible of construction, and very full of repetition, so that instead of attempting to translate them in full the present writer thought it better to give a few notes of the most interesting articles in these treaties on 'Border Laws.'

The remaining 'Border Laws' are in English, and are printed in Bishop Nicholson's *Leges Marchiarum*. (London, 1705.)

that all and every one of the Wardens of the Marches on either side, whether present or future, as well as all the notable men in the said Marches from the town of Newcastle-on-Tyne and Penrith in England on the one side, and on the other the inhabitants of the Marches from the towns of Edinburgh and Dumfries in Scotland towards England shall swear for themselves, and all of them on the Holy Evangel of God in front of them—corporeally touching it—that they will observe the said truce in all and singular its articles, without any deceit, fraud, or evil intention, and will cause others to observe the same as far as in them lies.'

That the Wardens had not yet acquired the full powers they enjoyed later, and that their 'Days of Truce' or March Days on the Border line, with their jurisdiction and assize, were not at this time established, is proved by sundry of the sections of this indenture. No. 12 runs as follows:—

1449 A.D. 'It has been agreed that if any one on the one side or the other, whilst the Truce lasts, take any fortalice from the other the aggrieved possessor may recover it by use of force or otherwise as best he can, and the evil-doers shall be punished as the case demands.

'And the *Conservators* of that part whose subject has taken the fortalice shall be bound to succour and

assist him whose fortalice has been taken and to make it good to him at the expense of the offending party as quickly and conveniently and diligently as possible; or if the offended party prefer it he may inform *the King and Conservators* of the other part or their deputies to cause the said fortalice to be restored to him, which they shall be bound to do and carry out to their power, without deceit, fraud or evil intention.'

Again, section 13 deals with malefactors guilty of wrong-doing in the opposite realm. They are to be punished, if caught, according to the laws of the land wherein they have offended.

If they escape, the Conservators of the other realm must attach them, if so requested, and hand them over to the other realm for punishment.

'If they cannot be apprehended then the King—whose subjects they are—must banish them with sound of trumpet at once and forever from his dominions, unless and until they have fully satisfied the offended party for their transgressions or attempts against him.'

There is here no mention of the Wardens' court or jury to assess the damages, 'the double and sawfey' of which we hear so much later on. The malefactor is to be banished, if not caught, and the Conservators are to make good his misdeeds out of his goods so far as they will suffice. If he is caught and has not

enough goods to make satisfaction, he is to be more severely punished and pay in his body. Any one resetting, counselling, or favouring the evil-doer is to be held responsible for the other's misdeeds.

Shipwreck.—Sundry sections of the indenture deal with the protection of seamen who may be shipwrecked, or, driven by stress of weather, put into ports of the other realm. They assign punishment to those who offend against them or rob their ships. The various Admirals of either realm are with the Wardens conjointly named as Conservators of the Truce with the Commissioners. They doubtless dealt with fugitives by sea, sea-robbing and shipwreck of ships and sailors.

Clauses 5, 6, 7, 8 run as follows :—

(5) 'Also, it has been arranged and concluded between ourselves and the said Ambassadors, that if during the duration of the Truce or abstinence from warfare, it happens that any subjects or vassals of the said most excellent Prince, King of England and France as they sail by sea on any just, reasonable or lawful cause—whether as merchants, pilgrims, fishers or otherwise—under stress of wind or storm, or any other just, reasonable, necessary and urgent cause, though they did not wish it nor had proposed it at the time of their leaving home—should put in at any port or other place of the realm of Scotland, or suffer

shipwreck in any other place in the same kingdom, while any person remains alive in the shipwrecked ship. In this event it shall not be lawful to the most excellent Prince, King of Scots, his cousin, or any one of his subjects or vassals, either by himself or others, to seize or take away from these shipwrecked or storm-beaten men their ships, goods or merchandise, or to take away anything from them, or detain, or by reason of the debt of any one to arrest them, or cause to be arrested in whole or in part; but it shall be lawful to these shipwrecked or storm-beaten men, thus detained by the repair of their ships—the reason of their detention having ceased—to depart with their ships, merchandise, goods and gear, as quickly as conveniently they can without any question, hindrance, arrest or action being made or brought against them by the said most illustrious Prince, the King of Scots, or any subject or subjects of his.

(6) 'And in like manner,' etc. :—viz. exactly the same provisions are to be applied in the case of shipwrecked subjects of the King of Scotland.

(7) 'Also, it has been arranged and concluded by our aforesaid Commissioners on either side, that if any one or more of the subjects of the most dread King of England and France, as is above said, chances to be driven ashore or shipwrecked, or to come into

the realm of Scotland under safe-conduct before the date of its expiration, or is so harassed by ill health that he cannot—being thus driven ashore, or coming under safe-conduct in his ship which has put into shore, or coming in before the date of expiry of his safe-conduct—conveniently depart and go to his own land, then he shall have liberty, being ill, or driven ashore or wrecked on his voyage, to stay in safety wherever he may have been driven or shipwrecked until he shall have recovered, and thereafter with letters of testimony from the Mayor, or Bailiff, Constable, or any other officer of the Lord the King in the place wherein he shall happen to be invalid—the cause of his illness abating—to depart on moderate charges, to his own country without any impediment or obstacle whatsoever, from any of the subjects or vassals of the Lord, the King of Scots.

'On the understanding that he shall not attempt, nor cause to be attempted, anything prejudicial against the King, his realm, or his subjects.'

(8) All of the above provisos to hold equally good in the case of Scots in the like case. There are also further clauses dealing with shipwrecked goods, loss of gear and robbing of the same by subjects of either realm or by foreigners.

The question of those who travel in the opposite realm under safe-conduct is also dealt with.

Two letters of safe-conduct are to be made out under the Great Seal of either kingdom, the English safe-conduct to remain in some convenient place on the Scottish Border, the Scots letter similarly to remain on the English Border, either for the use of the subjects of their several realm who seek for justice for offences done them, but not more than three or four together may use it at one time.

An injured individual, however, may follow his aggressor into the opposite realm without any safe-conduct, if he does so within six days. This, by the way, is the 'cold trod,' as the phrase went, as opposed to 'hot trod,' viz. immediate pursuit 'with hue and cry and horn and hound,' that was allowed even up to the union of the two crowns. The aggrieved individual is also permitted, if he prefers it, to approach one of the Wardens of the opposite realm or his deputy within six days for obtaining justice. Again, by virtue of the letters of safe-conduct, an aggrieved individual may at any time, while the truce lasts, enter the opposite realm and prosecute his cause under any competent judge[1] therein.

[1] This is further defined in another treaty sealed by the Commissioners in the Church of St. Nicholas in Newcastle, 14th August 1451. (Rymer, *Foedera*, vol. xi. p. 360.)

'Competent judge' was declared to be 'the Warden of that march where the delinquent resided: and if the person complained of has not his residence within the limits of either march, or could not be found within the limits of that where he actually resided, or was wont to reside,

Hunting, fishing, fowling or taking their pleasure in the opposite realm is forbidden without leave, first obtained from the proprietors, the 'Hunting of the Cheviot' being always a favourite pastime of the Scots. As for cattle depasturing in the other realm, the injured individual must not take the law into his own hands, but will have justice done him according to the law and custom of his own realm.

Fugitives from justice, becoming 'liegemen' of the other realm, must answer before the Conservators of the Truce on the opposite side for their misdeeds.

Other fugitives are to be handed over whence they came.

In concluding, the indenture gives full power to the Wardens and Admirals in their respective spheres to reform and make good all losses and felonies, etc., committed in defiance of the truce, and to punish all evil-doers as they deserve. In default of justice, either prince can appeal to the other by herald, who should send at least once a year two or three of his Council to the marches, not alone to punish the transgressors, but also to examine if the Conservators of

the plaintiff might, in that case, present a bill or schedule of his complaint to the Warden, who should with all convenient speed transmit the bill, together with the plaintiff, if the latter desired it, furnished with letters of attestation and safe-conduct, to be delivered without fee or reward, to the Chancellor of the Kingdom of which the party complained of was a subject: whereupon the Chancellor should summon the party accused, and with all possible despatch administer justice to the plaintiff.'

the Truce, the Wardens, or their deputies have been remiss in the execution of justice.

These Truces, Abstinences from War and Border Laws were to be proclaimed at the chief places along the Border, and occasionally throughout England, as may be seen in an injunction given in Rymer, 14 Ed. IV. (1474), 'de Treugis Scotiae proclamandis.'

In this case thirty-three counties, cities and towns are mentioned—ranging from Northumberland to Calais—where the proclamations are to be made.

Usually, however, publication and notification were to be made by the Wardens 'in omnibus et singulis insignioribus locis Marcharium suarum tam in regno Scotiae quam Angliae publice et solenniter,' beginning, for example, at Coldstream, then next day at Norham, and so on as continuously and expeditiously as possible within the following eight days.

Or again, the places where publication is to be made is left to the Wardens' judgment, as in the truce of 1487, where the actual words are set forth in Rymer as follows :—

'Captis et conclusis Treugis et Abstinentiis hujus modi fiant Proclamationes publice tam in Confiniis utriusque Regni per terram quam in Portubus maris et in aliis Locis ubi expediens videbitur pro firma et inviolabili Observatione earundem sub Poena incumbenti.'

In 1464 an indenture made between Edward IV. and James III. provides for peace between the realms for fifteen years, and therein the King of Scots binds himself not to 'give, afford sanction or allow his subjects to give countenance or favour to Henry, lately styling himself King of England, or to his wife, Margaret, or to Edward his son.'

Neither prince may issue a safe-conduct to a traitor or rebel of the other.

The provisions as to shipwreck and distressed seamen are nearly the same as before.

No impediment, on either side, to be given to ships sailing, and compelling to strike sail is forbidden.

Buying of wool for export into this realm forbidden. James Douglas is expressly comprehended in this truce on the part of the King of England as well as others born in Scotland who before the day of these presents have become lieges of the crown of England.

The truce does not apply to the dominion of (Lorn) Lorne in Scotland nor to (London) Lundy Island in England—'the said dominion and island not being regarded as comprehended in this truce.'

The oath to be taken as in the former indenture.

There is an indenture of the weirdest grammar conceivable to be found in Rymer (not included in

the *Leges Marchiarum*) under date 1473, viz. in the reign of Edward IV. of England and James III. of Scotland, which deals more particularly with the place of the Wardens' meetings and also prescribes the number that shall attend upon the Wardens at these meetings (viz. 2000), their lieutenants (500), the deputies (200).

It is further ordered that the slayer of an Englishman on Scottish ground, or the slayer of a Scot on English ground, is to be handed over on request made within fifteen days to the party complaining, to be 'justified or ransomed according to his will.'

If the slayer be fugitive then he is to be 'put to the King's horn,' viz. proclaimed a rebel, and any one 'resetting' (receiving) him is to incur the same penalty as the homicide himself would have done if he had been captured.

The indenture of 1533 in the *Leges Marchiarum* is to establish 'peace, friendship, league and alliance' between Henry VIII. and James V. during their life and for one whole year after the death of the first to die, but there must not be any derogation from any of the ancient and pristine treaties on either side with the Most Christian King of France.

Homicides, thieves, robbers, fugitives are to be handed over within ten days of the receipt of a request from either prince.

The granting of safe-conducts to be left to the discretion of the prince.

Homicides of Scots in England or of Englishmen in Scotland are to be apprehended by the Wardens of either march, to be brought to an appointed diet of the Wardens, and, if convicted, to be handed over to the opposite Warden.

1549. *Murderers* of the subjects of the opposite realm are to be apprehended by the Wardens, brought to the 'Day of Trews,' and there—if convicted by the 'Laws of Marche'—to be handed over to the opposite Warden to be punished with death.

Cold Trod, or the following up of goods stolen, within six days afterwards, permitted without safe-conduct. The pursuer, however, must 'go unto some honest man, inhabiting within the Marches which he hath enter'd, and declare unto him the cause of his entry.'

1553. *Fyling* (*convicting*) *and Acquitting upon the Honour of the Warden.*—Now first introduced, and limited 'to offences committed since the acceptation of the last Peace and before the date of these Presents.'

This was doubtless to expedite arrears, but it seems to have become permanent in march jurisdiction, and to have been extended in scope as set forth in the indenture of 1563.[1]

[1] On this subject, see also pp. 111-4.

It would appear from this indenture that a jury of 'six honest and famous men' of the Wardenry were adjoined to the Warden in these cases of honour (now extended to 'all complaints and attempts') by the opposite Warden. But as 'some ungodly Persons' took advantage of this order to 'make complaints and bill for goods lost where none was taken from them, and so troubled the Wardens to speir and search for the thing that never was done,' then are they to be apprehended and handed over to the opposite Warden (whom they had thus troubled) to be punished by him at his discretion.

The growth of civilisation and this increased desire of law and order is shown by the instructions incorporated in the subsequent Border Laws.

1553. *Baughling or reproving* a subject of the opposite realm at a Day of Truce forbidden—except by licence of both Wardens.[1]

1563. In the next indenture the Wardens must see that the complainant has justice done him on his bill of complaint.

Perjury.—Any one perjuring himself by swearing falsely his innocence of a bill filed against him is to be handed over to the opposite Warden to be imprisoned for three months, and at the 'next day of

[1] For the full treatment of the enactment and the meaning of the word, see Appendix v.

Trewes' thereafter is to be 'brought before the Wardens and there openly be denounced and proclaimed a Perjured man: after which time he shall not be reputed to be a man able to give further Faith or Testimony in any case or Matter.'

Overswearing of Value of Goods stolen.—The two Wardens, with a jury of '12 of the most worshipful and Credible Persons, then being present' (half of them Scotsmen, half Englishmen), may 'moderate, diminish or qualifie the number or Price of the goods or Cattel so oversworn.'

Trespass of Cattle.—The owner of the ground—or in his default the Warden—where one of the opposite realm 'willingly and customably depastures and feeds with his cattle or sheep, or staffherds the same,' may 'impound the said cattel and keep in Pound till the owner pays for the first time for every nolt [bullock] a Penny sterling, and for every Sheep a Penny Scots.

'If he offend again a double Parkage to be paid until it extend to 2s. per nolt and 6d. per sheep, beginning again with each New Year Day with a Penny Sterling and a Penny Scots.'

Some progress in administration upon the Border is now apparent, because in Edward IV.'s indenture it will be remembered that the injured person was to be allowed to avenge himself ('propria authoritate sua ulciscatur') if he could not obtain justice.

Fishing in the Tweed.—There were various disputes between the Captain of Norham, Selby of Twizell, etc., and the Scots, the English of course fishing the southern bank and the Scots the northern bank of the Tweed. Any one 'unlawfully troubling, stopping, or making impediment' to the subject of the opposite realm 'in his fishing is to be arrested by the Warden, and if convicted at the Day of Trews must pay 20s. sterling for every Tyde he made impediment,' and is to be 'delivered to remain with the party grieved, until the same be fully satisfied.'

Double and Sawfey,[1] or *Two Doubles.*—For *hurt* or *wounding* the same penalty is to be paid as for *robbing, thieving*, and *spoiling*, viz. '2 Doubles,' as it was called (viz. the original loss was doubled and a third mulct, 'the Sawfey' being added), the damage being assessed by twelve jurymen (half Scots, half English). 'Two Doubles' are also payable for *maiming* or *mutilation*, but over and above this the offender is to be apprehended and delivered to the opposite Warden, who is to punish him for '6 months in strayte prison.' The same applies to damage by fire-raising; and in 1563 it is ordained that for the third time of offending he shall 'incur the Pain of Death as a common offender against the Laws of the Marches.' In reality, there was much diversity of punishment,

[1] See Appendix v.

for, as section 25 of the indenture of 1553 points out, each Warden had 'a Form and manner of proceeding different from the other,' but the true punishment or fine was a triple one, viz. '2 Doubles' or 'Double and Sawfey' in addition to the claim.

1563. Strict orders are given in Queen Elizabeth's reign for the better ordering of justice on the Border, but whether much reformation was effected is doubtful.

Thus 'the Wardens of the Marches must keep their Days of March often, and in *proper person*, so far as may be and not by their Deputies, without just and great occasion.' Days of Truce are not to be let slip, and once a month one Day of March at least must be kept at every march by the officers thereof.

Price of Cattle determined.—'The price or value of Cattle is set down—for the avoiding of perjury heretofore committed in the valuing of Cattel, and for a great terror unto the wicked,' and also for the expediting of the assessment of the 'double' and 'Sawfey.' The single value was to be esteemed and judged as follows:—

'Every Ox, above 4 years old .	40 shillings
Every Cow ,, ,, ,, .	30 ,,
Every Ox, above 2 years old . .	20 ,,
Every young Cow do. . . .	20 ,,
Every other beast under 2 years old	10 ,,
Every old Sheep	6/

[Every] Sheep Hogge . . . 3/
„ old Swine above 1 year old . 6/
„ young „ 2/
„ Gate [Goat] „ „ . 5/
„ young Gate . . . 2/
„ double Toope to be valued after the rate of the Single.'

The Depasturing or Staffherding of Cattle in the opposite Realm is further dealt with.—Cattle or sheep that are 'staffherded or remain depasturing upon the ground of the opposite realm' for the space of six hours in one day may be taken to his own use by the owner of the ground or the Warden. The proprietor or Warden was to take with him '4 or more honest & credible persons unsuspected, to be present with him, to see that the execution be duly made, all fraud and Male Engine set apart & removed.'

'In the event of the cattle depasturing less than 6 hours the order of the indenture of 1553 is to apply concerning Parkadge & Pounding.'

'If lett or impediment be made by the owner of the Cattle then are they to be lawfully forfeited, and taken to the use of the Owner of the ground or Warden, for the Contempt and Resistance made against this order of Justice.'

Hot Trod.—Any new rules and innovations now made in Border Laws are not to interfere with the

old custom of *Hot Trod*, viz. the following '*their lawful Trode with*[1] *Hound and Horn, with Hue and cry, and all other accustomed manner of fresh Pursuit, for the Recovery of their Goods spoiled.*'

[1] Sleuth-Hounds, Sleuth-Dogs, 'Slew' or 'Slough'-Dogs

'And lang Aicky, in the Souter Moor,
Wi' his sleuth-dog sits in his watch right sure.'
The Fray of Support.

'Our ancient statutes,' wrote Sir Walter Scott (*Border Minstrelsy*, Hobbie Noble, note), 'inform us that the blood-hound or sleuth-hound (so-called from its quality of tracing the slot or track of men and animals) was early used in the pursuit and detention of marauders.'

'Nullus perturbet aut impediat canem trassantem, aut homines trassantes cum ipso, ad sequendum latrones. Regiam majestatem lib 4 ver., cap. 32.' Under the ancient custom of 'Hot Trode,' so continually met with in Border writings, the 'parties grieved' were—by Border Law and custom—'to follow their lawful Trode with Hound and Horn, with Hue and Cry.' The sentinel upon his lonely watch would certainly have been much heartened by the company of a staunch bloodhound, and the fugitive as much discouraged. 'These hounds seem latterly to have been popularly termed "slough dogs," for pursuing offenders through the sloughs, mosses, and bogs, that were not passable but by those who were acquainted with the various and intricate by-paths and turnings.'

In 1595 the Bishop of Durham and Lord Eure (Warden of Middle March) wrote to Lord Huntingdon (Lord President in the north) requesting that he should cause 'the Justices to revive the good orders for watches of all kinds, *sloughhounds* following hue and cry, and putting themselves and servants in better order for service under terms and leases in these remote parts.' (*Calendar of Border Papers.*)

And again, a little later, Edward Gray, Deputy-Warden, writes to Lord Eure: 'For *slew dogges*, I want a kallender whiche your Lordship hathe, by which I should call the dogs in their several divisions, and would gladly have it, if you could devise means to send it.'

In 1616 the Commissioners of His Majesty's middle shires appoint the manner of providing and keeping these 'slough dogs.' 'The sheriff, officers, bailiffs, and constables, within every circuit and compass wherein the slough dogs are appointed to be kept, are to take care for taxing the inhabitants towards the charge thereof, and collect the same, and for providing the "slough dogs," and to inform the commissioners if any refuse to pay their contributions, so as thereby such as refuse may be committed to the gaol till they pay the same.'

A Warden may pursue in *Hot Trod* fugitives or offenders into the opposite realm, and none may let or hinder him, but must join him on request and notice given of the reason of the chase, for the Warden is to give knowledge of the 'Hot Trod' to the 'first town he cometh by or the first Person he meeteth with' on such occasions.

If the pursuer 'do injury or unlawful harm within the opposite Realm' he is to be delivered to the opposite Warden and to be punished at his discretion, and other twelve persons of the same realm to be nominated by the opposite Warden.

A Warden's Raid or *Rode* (formerly at times undertaken by the Warden, who was permitted to avenge injury by his own strong arm) was forbidden, 'except when specially commanded by the Prince,' by Elizabeth in 1596, but this, of course, would not interfere with the ancient liberty of pursuing the *Hot Trod.*

1596. Again, in 1596 stricter order is to be taken with 'all notorious Thieves and Robbers' within the various Wardenries. A list must be enrolled and given in to the Warden, 'who shall, upon the *first* attempt that shall be truly filed upon them hereafter, put the offender immediately to death: or, in case he be fugitive, shall cause him to be proclaimed such an one according to the order and customs of the Borders,

and his House immediately to be demolished and destroyed, that it serve him no more for Receipt within that Wardenry.' Previously to this, by the Border Law of 1563, the offender was only to be put to death for the third fault.

Goods lost to be claimed within Year and Day.—'If it shall happen any person to have *bona fide* in his possession stollen goods, not knowing them to be stollen, in case he be not sued therefor within year and day, the goods *shall remain* with him ever after as his own proper goods.'

Pledges.—Finally, in regard to the 'pledges' so often mentioned, usually they were of 'very mean quality,' not unlike Falstaff's 'pressed men,' and their fate was frequently to die in prison. 'Haddock's Hole' at Berwick had its tale to tell of these vicarious pledges. Prisons, indeed, were so foul and unsanitary that prisoners of a higher quality, who would be treated with greater consideration, often suffered the like fate. Thus in Henry VII.'s reign, on the occasion of 'Sir Robert Carre, Warden of Scotland, being slaine at a trewe, an Heron with 7 others were delivered for him, and died in Fast Castle prisoners for that facte.'

Sometimes in the absence of his 'pledges' the Warden would 'deliver' an officer of his own. Suppose, for example, a bill had been 'fyled' upon

an inhabitant of his Wardenry, and that the Warden had not been able to arrest him at the Day of Truce, he might, to prove his goodwill and faithfulness, hand over his own servant instead. In which case he often, as the phrase went, 'borrowed' him again upon his word.

Thus in the indenture of 1596 section 11 deals with the personal responsibility of the Warden in this case :—

'Yf the warden deliver his officer for a bill fyled before him, and afterwards borrow him again upon his word, as is the use, yf in the meantime the party so fyled depart this life, by whatsoever way or means, in this case the Warden shall pay the bill, and seek his remedy and relief upon the heirs and executors of the Defunct, as he may best.'

Broken Men.—This would more especially be the case with the 'pledges' of the 'broken men,' such, for example, as the Routledges on the West March, who were proverbially spoken of as 'every man's prey.' There was special provision made for them and for 'clanless loons' in the indenture of 1596, where certain sections deal with the pledges to be entered for 'every sirname of broken men' (viz. men without a responsible head or chief), and also with the pledges for 'such Border men and others as are not of any knowne Clanne'; and it is enacted 'that being entred

thay shall be kept by indifferent men, upon their own expense, and not committed to the custody of any person with whom they stand at feed or variance.' These men were to be responsible for their whole sirname, and if the bills fyled were not redressed within a year and a day, 'it shall be in the choice of the Prince or officers (in whose hands they remain) to take their lives, or to retain or seize them at their pleasure till the full delivery be made.'

CHAPTER VI

PART I

THE COURTS AND JURISDICTION OF THE LORD WARDENS

Border Meetings

THE phrase 'a Border Meeting' might imply the coming together of the two Wardens for the holding of a Day of Truce, or else the assembly of the Commissioners or Conservatores Treugarum for settling peace between the two kingdoms.

In 1598 Sir William Bowes, writing to Burghley, thus distinguishes between the two kinds of Border meetings. '1st. Ordinary, between the wardens or deputies for common justice. 2nd. The other, the more solemn, as between commissioners sent for leagues, treaties of peace, or misconduct of wardens. They differ in kind and observance, yet agree in others, viz., taking assurance; meeting at the place, and sitting in some church or town for business; also that assurance usually, by the English going in, is demanded and taken first, immediately after, the Scots

demanding and receiving the like of ours. They differ more in other two points, viz., the more principal commissioners have kept their meetings on the "very marche lyne," and for their session, mostly, not always, at Berwick or Carlisle. Ordinary meetings and sessions usually in Scottish ground, except when by the wardens' agreement, transposed for convenience to a frontier town. I find from "auncient" men this was the usage, drawn from the practice of the first Lord Wharton and Sir Robert Bowes, two of the most expert Borderers within memory.'

The Form and Order of a Day of Truce, or the Meeting between Warden and Warden

In Burn and Nicholson's *History of Westmorland and Cumberland* there is given a very interesting account from a manuscript of one Richard Bell, who appears to have been Warden Clerk on the Western March during the greatest part of Queen Elizabeth's reign, of the manner of keeping Warden Courts. These courts were held by both Wardens at Days of Truce for the mutual redress of grievances between the subjects of the one kingdom and the other in the various Wardenries.

In this manuscript there is given '*a brief declaration of the special heads, orders, and forms of the laws of Marches of ancient time used upon the Borders*

by the Lord Wardens of England and Scotland at their meetings and days of trewes.' By means of their messengers or servants, the various Wardens would arrange with each other a day and place of meeting, and their clerks would be instructed to interchange their various bills containing the accusations—the list of 'attempts'—of either realm against the other.

Then the 'Days of Marche so appointed, proclamation is to be made and straite letters of commandment directed in the Queen's Majesty's name, for all lords, knights, esquires, gentlemen, and several officers, with convenient numbers of their charge and tenants (as time and service require) for to repair the night before, and give their attendance upon the Lord Warden unto the said day of Marche, defensibly arrayed, and with their best horses and nags, the morrow next following.

Which done,

'The Lord Warden, attended with the gentlemen, officers, servants, and their powers, is to ride from the place where he inhabiteth, unto the Marche bank, all staying there without riding any further, or going over the stream if there be water, or bounds if it be dry land.

Until

'The Lord Warden of England first of all (the

opposite Warden known to be come to the place appointed), doth send either his deputy, or some other special gentleman of good worth whom it pleaseth him to make choice of, with a convenient number of the best-horsed and most sufficient gentlemen of his company, unto the Warden of Scotland, signifying his repair thither, and craving assurance during their meeting until the sun-rising of the next day following, which assurance being required by England and granted by Scotland: the Scotch Warden, holding up his hand, engages for performing thereof in all respects.

'Then the deputy and other gentlemen of England, returning back to the Lord Warden of England, are to make relation of the assurance granted, and consent for the preservation of the amity.

Forthwith after,

'The Lord Warden of Scotland sendeth his deputy or some other special gentleman, accompanied with others of the best sort of horsemen, unto the Lord Warden of England, shewing that the Lord Warden of Scotland yieldeth to allow and confirm the assurance demanded for Scotland, craving the like for England: which the Warden of England, holding up his hand, granteth.

That done,

'The Deputy of Scotland and his company return

back to the Warden of Scotland, declaring the granting of the assurance by England.

'The Lord Warden of England, before he or any of his company enter into Scotland, causeth proclamation to be made for observation of the peace, for old feeds[1] [feuds] and new, word, deed and countenance, from the time of the proclaiming thereof, until the next day at the sun-rising, upon pain of death.

And,

'The like proclamation, after their return forth of England, by the Scotch Warden made before meeting.

'The Lord Warden of England with his company entereth into Scotland, riding to the place where the Lord Warden of Scotland is, and lighting off horseback stands still, until the Scotch Warden comes to him then and there in all friendly and orderly manner, mutually embracing the one the other.

'After meeting and conference had between the Lord Wardens, they draw themselves remote to some quiet place, interchangeably calling the rolls and bills of both sides, in the presence of the gentlemen of the best sorts of both the countries.

Whereof,

'If any doubt arise touching the fouling of the

[1] The meaning is that none should offend another by any speech, action or look, and that no 'deadly feud' of the past should be revived or a new feud started.

said bills, then the same is to be tried either by the Lord Warden's honour, or a jury of six gentlemen of England, and six of Scotland, or by a vower[1] publique.'

The oath of the jurors is:

'*You shall clean no bills worthy to be fouled, you shall foul no bills worthy to be cleaned, but shall do that which appeareth with truth, for the maintenance of the peace, and suppressing of attempts: So help you God.*'

The ancient oath for excusing bills:

'*You shall swear by heaven above you, hell beneath you, by your part of Paradise, by all that God made in six days and seven nights, and by God himself, you are whart out sackless of art, part, way, witting, ridd, kenning, having or resetting of any of the goods and cattels named in this bill: So help you God.*'[2]

The oath of swearing of bills fouled:

'*You shall leile price make, and truth say, what your goods were worth at the time of their taking to have been bought and sold in a market taken all at one time, and that you knew no other recovery but this: So help you God.*'[3]

[1] A person agreed upon by both parties, who was to be of the country of the party accused.

[2] This evidently must be the oath of the defendant.

[3] This must be the oath of the prosecutor.

'The Lord Wardens[1] having proceeded to the calling, fouling, and making delivery of bills: concluding, cause proclamation to be made by three Oyez's:

'We do you to wit, that the Lords Wardens of England and Scotland, and Scotland and England, have at this day of truce well agreed, conform to the laudable custom of the law of Marche, and have made answer and delivery, foul or clean, of all the bills inrolled and so the proclamation holds on according to the Lords Wardens' agreements and directions.

'Proclamation made, and leave taken by the Wardens in all kindly sort, they with their companies depart and return homeward.

[1] The Lord Wardens themselves had latterly to take oath to do justice. Thus, Item 4 of the indenture of 1563 runs: 'That every Warden, at the First Day of Trewes, hereafter to be holden by himself, shall (in the presence of the opposite Warden, and the Inhabitants of both the Marches) make a solemn oath, and swear by the High God that reigneth above all Kings and Realms, and to whom all Christians owe obedience; That he shall (in the name of God) do, exercise and use his office without respect of Person, Malice, Favour, or Affection, diligently, or undelayedly, according to his vocation and charge that he beareth under God and his Prince; and shall do justice upon all complaints presented unto him, upon every Person complained upon under his Rule, and that, when any complaint is referred unto him, to swear, fyle, and deliver upon his Honour, he shall search, enquire and redress the same at his utmost power; And that, if it shall happen him in so doing to acquit and absolve the Persons complained upon as Clean and Innocent; yet if he shall anyways get sure knowledge of the very offender he shall declare him foul of the offence, and make lawful Redeem and Delivery thereof, albeit the very offender be not named in the Complaint. And this oath of the Wardens not only to be made at the first meeting hereafter to ensue, but also to be made every year once solemnly, as aforesaid, at the first Meeting after Midsummer, to put them in the better Remembrance of their Duties, and to place the Fear of God in their Hearts.'

Which done,

'The Warden of England calleth upon the gentlemen, demanding their opinions and good likings of the proceedings and conference had betwixt him and the Lord Warden of Scotland that day. Whereunto the gentlemen give answer and their opinions, which done, the gentlemen take their leave: the Warden yielding them thanks for their attendance and readiness of service.'

Fuller and more detailed instructions as to the method of procedure and punishment can be obtained from the Border Laws. Thus in an indenture of 1553 made between the Commissioners of the Queens of England and Scotland, 'it is ordered and devised for a more special expedition of justice between the said wardens of the said East and Middle Marches, that all attempts and complaints done within the said marches, since the acceptation of peace, shall be inrolled by the Warden of the marche where the complainant doth inhabit: and the said rolles shall be sent to the opposite warden, answerable to the same; and the warden shall receive the said roll, and shall do his uttermost power and indeavours *to speire, search, and enquire* the truth and verity of these attempts, contained in the said complaints; and to cause such persons as be there complained upon to be arrested by the serjeant, to answer thereunto, if they be present.

'And if they then shall happen to be absent, then they are to be arrested: to answer at the next day of Trewes, where and when the warden and the assize shall either fyle the said bills, or give another lawful answer at their next meeting, after the laws and customs of the marches: whereof 6 to be of the said warden's appointment, and the other 6 to be appointed by the said complainant, or such as do follow the bill.'

And further, supposing that those individuals who had been 'fyled' (found guilty) by the Warden had fled or hidden themselves so as to avoid arrest and judgment at the Day of Truce, then—'no lawful deliverance or recompense' having been made for the same—'it is agreed, that the wardens of both marches (at the next day of Trewes ensuing or following of the fileing of the said bills) shall make deliverance of such other persons, by the arrest of the opposite warden: as he will undertake to be sufficient for the said bill. The person so delivered to remain with the party offended, until he be fully satisfied, and lawfully and fully redressed, according to justice, and the laws of marche.'

From the various accounts of the form of trial given by Mr. Bell (the Warden's clerk), the *Leges Marchiarum*, and the Memorandum on the 'mode of holding a march day' as given in the *Calendar of*

Border Papers in 1585, it would appear that the Wardens' method of procedure varied as the years went by.

There being some confusion apparent, it is as well to set down here the changes that appear to have taken place.

Thus section 1 of the indenture of 1553 permits the Wardens—for a more especial expedition of justice—to 'speire, search, and deliver.'

Section 4 limits this 'special order before demised for the Fyling and acquitting of bills upon the honour of the Warden only to such bills containing offences as have been committed since the last peace and these presents,' and is 'not to abrogate or alter the old laws and customs in fyling bills by the Wardens of both realms.'

A jury of twelve men—of whom six are to be nominated by the respondent Warden, and '6 to be nominated by the complainant, or such as do follow the bill'—are appointed as the Wardens' assize.

In 1563, however, a step further in the direction of a more expeditious method of obtaining justice is taken, for therein the Wardens are bidden to '*speir, fyle, and deliver upon their honour*, together with six honest and famous men, adjoined to him for the tryal thereof to be named by the opposite Warden.'

Finally, in the last of the Leges Marchiarum, the indenture of 1596, this last step is taken, that the Warden must himself fyle or clear every bill submitted to him.

There is here no mention of the former mixed jury of twelve of 1553, or the jury of six of his own Wardenry of 1563, so that everything was now left to 'the honour of the Warden.'

The section (5) dealing with this runs as follows :— 'That the Wardens in fyleing and clearing upon their Honours, shall set down in the margin of every bill fyled and cleared by them (foul or clear, as I am verily persuaded upon my conscience and honour), and such bills as they will not fyle or clear within the said fifteen days, by these words, or such like in effect, the same being signified unto them within the foresaid space of forty-eight hours, to be foul upon themselves for their neglect of duty in that behalf.'

The confusion that resulted, and the difference in procedure noticeable in various cases, are probably due to the fact that the indenture of 1553 specially guarded against the altering or abrogating the 'old laws and customs in fileing bills by the wardens of both realms.'

This at least is the only explanation that can be

given of the procedure in the case of the bill of Percival Reed of Troughend in 1590, when 'at the Belles Kirk[1] on the 13th of April he complained upon sundry Elliots and Armstrongs for "an open foray" at Troughend on Whitmonday 1589, for "reaving both insight and outsight gear, and the killing of 2 men,"' which is 'alredie agreed, fyled, and sworne by the sight of 4 Englishmen and 4 Scottesmen.' (*Calendar of Border Papers.*)

In conclusion, we give here two instances from Burn and Nicholson's *History* of 'bills fouled,' one against England and the other against Scotland.

The first is 'fouled' against Liddesdale by the Commissioners of Berwick for lack of appearance.

JUNE 1582

Mathew Taylor, and the poor widow of Martin Taylor, complain upon	Old lard of Whitaugh, young lard of Withaugh, Sim's Thom, and Jock of Copshawe, for	140 kie & oxen, 100 sheep, 20 gate, and all their insight, 200l sterling: and the slaughter of Martin Taylor, John Dodshon, John Skelloe, and Mathew Blackburne.

[1] 'Lyddesdale.—At the Belles Kirk the xiii of April 1590 William Fenwick gentleman, deputie for the warden of the Myddle Marches of Englande, and Thomas Trotter, deputie for the Lorde Bothewell, keper of Lyddesdale, principally mett for the redressinge of attempts on bothe sides.'

The second is 'fouled' by the Commissioners against the West March of England.

Walter Scott of Branxholme, and the tenants of Ettrick house, complain upon	Will Grame of the Rose-trees, and Hutchins Richie of the Balie, with their complices	80 kine and oxen, 40 nolt, 160 sheep, one horse.

PART II

THE DIFFICULTIES AND DRAWBACKS OF THE WARDENS' PROCEDURE

Apparently at a Wardens' meeting or Day of Truce the Lord Wardens were restricted by the treaties and conventions between the two kingdoms, for 'the laws of the Marches,' writes Sir R. Bowes, 'be grounded and taken furthe of the articles and convencions of the last treatie of peace passed betwene the realmes and other remedye or redresse is there none for either partie against the other, but according to the said convencions and treatye, wherefore in some cases a person of eyther realme having both hurt and wrong can have no remedie because the case is not provyded for in the treatye as shall appear hereafter.'

We may add in this connection Sir R. Bowes's further remarks upon the difficulty of obtaining justice at a Day of Truce, premising this, however, that the Scottish Warden would probably have said the same of the Englishmen opposite.

'And yet nevertheless because Justice can never perfectlye be had of the Scottes, in some case for lacke of dewe obedience of the subjects, and in other cases because of maintennance that gentlemen beare unto the thieves and misdoers, and also by occasion of perjurye of the Borderers, myne opinion is that yt ys the best waye to doe them semblable Justice for England, as the Warden of Scotland or his deputy can or may obtaine at their hands and no further or otherwayes, and so shall they best be brought to Justice and otherwayes the Scottes wilbe greate complayners and exclamers for Justice, and of there owne parte, execute or doe little or none, but take advantage of all delaies, evasions, and subterfuges that may be profitable to that realme either trewe men or thieves.'[1]

Apart from these restrictions and prejudices, however, the weakest point in the procedures dealt with in the last chapter lay in the fact that if the Warden would not 'fyle upon his honour'—from whatsoever cause — and no 'avower' would come

[1] Richardson, *Reprints of Rare Tracts*, vol. iv. p. 23.

forward, the defendant would go free. The '*notorietas facti*' might make no appeal to unwilling ears, and there is no means of coercing a Warden save by referring the matter to the King or Council.[1]

The sixteenth-century paper distinctly asserts this in the following words :—'Except the Warden himself knowing shall acknowledge the fact, or a man of the same nation found that voluntarily will avouche it (the ordinarie and only waies of trial), be the facte never so patent, the delinquent is quit by the laws of the Border.'

But, naturally, if the Warden would not 'confess the fact' it would be difficult to procure an avower, for the avower might easily incur the displeasure of his Warden and his own countrymen.[2]

[1] In the mode of holding a March Day, 1585 (*Calendar of Border Papers*, vol. i. p. 194), it is said that 'the manner of triall of ane person is twofolde, viz. (1) when the Warden shall, upon his owne knowledge [*ex notorietate* facti*, as it is elsewhere written], confesse the facte, and so deliver the partie offending.' If he, however, refused to 'confesse the facte,' and so 'deliver upon his honour,' there was (2) a second way of trial, 'which was by confronting a man of the same nation to averre the fact.' This individual would correspond evidently with the 'vower publique' of Mr. Bell's manuscript mentioned above; but there is no mention of the third way of trial given by Mr. Bell, of a jury half Scots, half English.

[* One of the charges against Sir John Forster was 'that he hath frustrated the English subjectes of redresse, demaunding vower for knowen murtheres and day forrayes, and spoyles of whole townshipes, which by the customes of the Borders doe avow themselves.' (*Calendar of Border Papers*, vol. i. p. 233.)]

[2] The following incident, taken from letters of Sir John Carey and Wm. Selby to Burghley in 1596, will sufficiently prove this. A Commission

Again, there was this further possibility of trouble for an 'avower,' that he might be 'backbilled' against. 'Backbilling' against an avower is dealt with in 1596, and confirms what was said above as to the difficulty of carrying out this method of rendering justice.

Sections 17 and 18 of the last of the Border Laws—the indenture of 1596—deal with this possibility of 'backbilling' or bringing a charge against such a witness.

'Yf any man unjustly trouble or offend another in word or deed, any time hereafter, for fyling

was sitting in Berwick at this time, and Ralph Selby, nephew to Sir John Selby, gentleman porter, had been 'deposed by the Commissioners whether one George Nevill, servant to the Ladie Gray, and Mr. Ralph Gray, had stolen certaine cattle from Mr. Walter Carre of Littleden, a Scottish gentleman.' Nevell, then, was 'filed' (found guilty), and in revenge filed a bill brought in against Ralph Selby, who, 'knowing himself clear, denied it, and an English vower was called on according to custom. One Mr. George Nevell, a tenant to Mr. Ralph Grey and a servant to my Lady Grey, vowed this bill against Mr. Selby, who was filed. Thereon hot words passed between Selby and Nevell, and Mr. Grey being by, hearing the gentleman ill spoken to, defended his cause somewhat, whereon some hard words grew between Mr. Selby and Mr. Grey, which being in the open court was qualified by the officers in time.

'But the Selbys, as I understand, sent a challenge that night to Mr. Ralph Grey and his brother Edward, to meet with the gentleman porter and his nephew. It was not in writing, and the Greys refused. But this morning Mr. Ralph Selby sent a new challenge to Mr. Edward Grey himself, whereon the latter sent a man to the gentleman porter's lodging, desiring him to meet in the churchyard, where they might debate and confer friendly on that matter. They met, but their kindness fell to such unkindness, as they fell together by the ears. The gentleman porter and Mr. Edward Grey are both hurt, a very honest gentleman of Mr. Ralph Grey's killed, and 4 or 5 of either side very ill hurt.' (*Calendar of Border Papers.*)

any bill hereafter against him, he shall never be heard to backbill against the Avower; and nevertheless shall be punished therefore by the discretion of the Warden, according to the quality of the offence.

'For eschewing of fraudulent drift and delay used in backbilling, of purpose to disappoint the avower of his proofs which he hath or may have presently to verify his word. It is ordained, That whosoever shall backbill against any Avower, shall do it against or within 40 days after the filing, or else to be excluded from the remedy for ever; and, to that effect, every warden shall be bound to hold warden courts, and to do justice within 20 days after he shall be required by the party, under the pain of paying the bill himself.'

As a Scot was not permitted to bear witness against an Englishman, nor vice versa, the outlook for a prosecutor must often have proved black and the method of avowry a feeble reed to trust in, though possibly he might procure an 'avower' by availing himself of the licence allowed by the indenture of 1460 in Edward IV.'s reign, whereby the injured party might—without any safe-conduct—within six days of an assault or injury, in the endeavour to right himself enter into the opposite march and make his complaint and losses known unto some

inhabitant there of good fame and unsullied repute, or else unto the Warden himself.

The latter-day Borderer must have sometimes sighed for the ancient 'duellum' upon the march allowed by the first of all the Border Laws, when he found his oath of no avail, the opposite Warden refusing to 'fyle,' and no avower forthcoming.

The powerful chieftain, 'the strong man armed,' could take good care of himself, but the poor man—the 'Jimmy Telfer of the fair Dodhead'—had often a hard task to win his own good kye back again, and usually he would be driven to pay 'blackmail'—protection money—even though it was forbidden by the Laws of March, in order to ensure protection or at least a measure of revenge when his 'gear' had been 'lifted.'

Even when the Warden, anxiously endeavouring to do justice, fyled bills 'upon his honour,' there was still the difficulty of capturing his felons and handing them over to the opposite Warden.

If they had hidden themselves, or fled, the Warden was in a very uncomfortable position, for he might be taxed with equivocation or worse, as Sir John Forster was by Carmichael at their meeting on the Reidswire in 1575. Again, sometimes he might have to surrender his own servant as a pledge, as was pointed out in Chapter v., to be handed over to the offended

party till the guilty person could be found and delivered over in his stead or else due reparation made by money payment. Thus in 1596 Buccleugh, Keeper of Liddesdale, surrendered himself in default of his pledges to the English Commissioners at Norham.

The greatest difficulty of all in the obtaining of justice, however, lay in arranging the meeting of the Wardens.

Continually one reads of one or other Warden 'making shot' or 'shotting' the suggested meeting: usually the reason was unwillingness to meet his opposite because of the heavy list of 'attempts' he would have to answer, but sometimes, of course, the meetings were deferred ('shot') owing to illness or a summons from the King or Privy Council. Once 'shot' the meeting was very difficult to bring on again, and one reads of Liddesdale not being brought to justice for years, as no one was responsible, or at least none would admit responsibility, for so fierce a community.

PART III

'Now, Douglas,' quoth Erle Percy then,
'Thy proffer I doe scorne;
I will not yielde to any Scott
That ever yet was borne.'

QUESTIONS OF ETIQUETTE AND PRECEDENCE AT THE MEETINGS OF THE WARDENS OF THE MARCHES

As representing the sovereigns of their respective countries, the Wardens were often as punctilious as accredited ambassadors in regard to procedure and precedence. It seems, however, that the practice as set forth by Mr. Richard Bell, the clerk of the west Wardenry, had come to be regarded as fixed, viz. that the English Warden should send a messenger into Scotland at a day of diet or Warden's meeting to 'crave assurance' from the Scots Warden for his entry without the formality of meeting upon the actual march line. This given, the English Warden would advance into Scotland with his chief gentlemen and officers, and there was received by the opposite Warden.

Thus the Lord Dacre, Warden of the West March, writes to the Privy Council concerning the meeting with the Scots Warden at Lochmabenstone (beside Solway, near Gretna Green) in 1550. 'And whereas it hath been used in times past, that the said assurance was asked and granted on both parts,

before the Lord Warden of England passed over the water, I thought it meet now for the better maintenance of the king's title and interest of the debatable land to go over the same water into the same debatable, before we either demanded or granted any assurance; where the same was accomplished accordingly and so proceeded to the place prefixed.'

But Sir Robert Carey, young, energetic, and determined to uphold his Queen's rights to check the Scots' pride, refused to follow this practice when Warden of the Middle March, and insisted upon returning to the more ancient method of first meeting with the Scots Warden in *mid-stream* (when the march was the river Tweed), and only after that passing over into Scotland.

He thus writes to Cecil in 1598 :—

'On the 12th inst. [September] there was a meeting appointed betwixt Sir Robert Ker and myself at Fyerburn mill hard by Warke Castle: when we both came to the place, but met not, by reason he would have had me come over the water into Scotland, which I refused, except he would meet me in the "myd-streamt." So we broke off, appointing a new meeting on the 19th hereof at the Cocklaw, which is a dry march. There also we differed, for he would have me come into Scotland, which I refused unless he would come to the very march to fetch me: so

that there was no likelihood of our meeting at that time likewise. My reason for standing more strictly on these points was certain proud words uttered by certain Scots gentlemen that he sent over to me to take assurance—which were as follows: "That England dyd owe that duty and obedyence to Scotland to come over into Scotland to them at all meetings upon the Border"—to which I took exception, telling them I would not refuse to do as other Wardens did before me, viz., to meet always at the March, and so go over into Scotland and end our business there.

'But I utterly refused to enter and acknowledge any duty or obedience to Scotland, and said I would inform the Queen my mistress of their unseemly words, and if it were her pleasure to yield, I would obey her commands. Wherefor I pray you to acquaint her Majesty and signify her pleasure against our next meeting.' (*Calendar of Border Papers.*)

Again, in October of the same year Sir Robert Carey writes further on this point to Cecil:—

'By your letter of 29th Sept. received the 4th inst. "late in the night" I understand her majesty's pleasure to be informed "by whome, from whome, and in what manner, these words of obedyence and duty were spoken?"

'This was as follows: After I had sent to the

Warden for assurance, and that as accustomed I would meet him at the March (which in that place was in the myddes of the water), and then with him enter Scotland, he sent word by 4 of his company that I was to come over the water to the dry land of Scotland and he would there receive me.

'Some dispute arising between me and them, at last one of them, John Ker of Corbet house, sayd of himself, not from Sir Robert Ker, and he spoke yt to me, that yt was an obedience England ought to Scotland, ever seynce a warden of their's was slain at a day of trew by us, one of Sir Robert Ker his ancestors: and at that instant, another of them called Andrew Ker of Rocksbrough, sayd to Roger Woodryngton, Sandy Fenwyck and others of my companye, that seynce that time we have ought them that dutye. This was the manner of their uttering and it made me more "kuryous" to yield. I have made inquiry of the best and oldest borderers as to the manner of the Wardens' meeting, and they concur that we are to go into Scotland, and end our causes of meeting there.

'But the manner of our meeting ys the thing in questyon: it ys for certen that Sir Wylliam Drurye, when he was Warden of the East Marche, never met but in the myd streame: and after meeting there he went into Scotland.

'The gentleman Porter dyd avow these before the Scotes that he had seene his brother meete in the myd streame with Sir Robert Ker's father: and so dyd a sonn of Sir John Selbye's lykewyse affyrme. Dyvers gentlemen of the Myddle Marche dyd there avowe that they had seene Sir John Forster do the lyke.

'The Scotes wold allow none of this, but brought in proofes of latter tyme how that Sir John Selby, Sir John Forster and my Lord Eure, in their tymes dyd continually comme into Scotland a good peece before they weare mett with the wardens of Scotland: which I think to be trew, for the 2 Sir Johns being growne old men and loving their ease and quyet, knowing that they were to go into Scotland, of latter years respected not the meeting at the Marche, but went over into Scotland to them: and my Lord Eure after their example dyd the lyke.

'And the Scots are so good natured, that yf we give them an inche they wyll take an ell! and would have us follow the later customs. But as the ancient Borderers think the first meeting should be the very march and the business determined in Scotland, I see no reason to yield more than is due: yet if her majesty's pleasure be that I go over before we meet, I will obey, having discharged my duty.'

Finally, in a letter—four days later in date—from

Sir William Bowes to Cecil it is written: 'An auncient gentleman folower of Sir Robert Bowes, telleth me that he carried a great meetinge thus: both parties beinge drawne neare the Marche lyne, Sir Robert stepped forward unto the Scottish syde audiblie speakinge these wordes—"*I will loose the kinge my master no grounde*," clearly coveringe the necessitie of his entry hereby.'

He then proceeds to set forth 'the ground of so yielding.' 'It is held by tradition on the Borders,' he writes, 'that when a war between the realms ended, the Scots must first demand peace. During peace, at ordinary meetings, the English must first ask assurance.

'Your honour may learn better on this from the heralds than on report of tradition.' Another ground is imputed to the slaughter of Sir Robert Ker, great-grandfather to this Cessford, slain within English ground by one Starrhead, servant to Sir William Heron, the English Warden, who, though not present that day, was delivered into Scotland by 'that noble and just Prince King Henry VII., yet they say the Scots swore they would never after come on English ground for justice, and by the King's sufferance this course has grown.'

A third traditional reason he also gives, which is that formerly the English and Scots princes were

used to meet on occasions of 'interpelance' and treaty near to a privileged monastery beside Lady Kirk which was originally built upon 'Debateable grounde.' This ground, however, is now within reputed Scottish territory, but the old custom still continued.

As to the best course to be pursued, 'his opinion is that if no treaty or record is found to bind her majesty, I see not why common errors should prejudice her rights or safety of her people: especially when weighty occasions press for reform—as in these vain words repeated by Sir Robert Carey, "too bigge for any Scottish mowth," or in the treacherous tumults and slaughters at the Readswyre, Cocklaw, Westfourde and the like, chiefly as the custom forces her officers and people to take Scottish trust: which I would reform by first fixing the very line dividing the 2 realms: and then one realm at one time, and the other at the next, may in turn demand assurance, and keep their sessions of justice interchangeably.'

There are also letters to Cecil this same month from Sir John Forster and William Selby on the subject of march meetings, but nothing definite seems to have been arranged, and the more recent method seems to have been adhered to during the next five years—up to the time of the accession of

James VI. and I.—whereby the less important meetings were held on Scottish ground, while the more important discussions were carried on at Berwick or Carlisle.

PART IV

'Quis custodiet ipsos custodes?'

The rules of the game were, as we have already seen, drawn up by the Commissioners of either kingdom, and added to by the Wardens; but with such keen players as the Border chiefs and their followers there was a good deal of 'offside' in the playing, and any dispute that might arise was joyfully welcomed by the more turbulent as a means of deferring the inconvenience of a trial and possible 'hanging,' or again as an opportunity to avenge an injury or feud. Thus at the 'day of trews' at Hexpethgate on Windy Gyle, in August 1585, when Sir John Forster, the English Warden of the Middle March, met Ferniehirst, the Scots Warden, the occasion was used by Sir Thomas Ker (of Ferniehirst), the Scots Warden, to kill Forster's son-in-law, Lord Francis Russell, who had sent up to the Lord President of the Privy Council some intercepted letters of Ferniehirst's and Arran's.

Now Ferniehirst was a great supporter of Mary

Queen of Scots, and a great plotter on her behalf, so that the defence he put forward afterwards, that 'one Wanless ane English boy dyd breake the said assurance by stealing a paire of spurs, and that his friends dyd hurte a Scots man,' seems quite untrue in face of Forster's statement, that Sir Thomas Ker 'came not only with the force of his own marche, but brought a company of the Merse, which neither he nor his predecessors ever did before—and with ensigns, pensells, and drums in warlike manner, attacked us while sitting quietly calling our bills, and gave their full charge upon us, when Lord Russell was slain, and the whole field broken and disordered.'

Forster had 'offered the boy to be delyvered to be hanged, and all things was pacified and done,' and the real cause of the breaking of the assurance was the interception of 'certain writings beinge in ciphers forth of the purse of the berer thereof cominge from Pharniherste.'

Forster in his despatch to Walsingham says further, 'What yt was I knowe not, but I think yt came from Arraine and Pharnihyrste; but howsoever yt came, I know that Pharnihyrste was in a great greife with him for yt, which I thinke hath beine a greate occacion of the crewell murder upon him, and I hope that yt will manifestlie fall owte that the Karis [Kers], which are the nearest kinsemen to him

in all Scotlande, are the killers of him, so that yt appeareth that yt is a pretended matter before devised by Arraine and Pharnihyrste.'

A cairn ('slain man's cairn') was raised on Windy Gyle, and may still be seen there to this day, which marks the spot where Lord William met his death.

Ker, who is said to have been able to raise three thousand men within his own march, died the year after, and Sir John Forster, reporting the occurrence to Walsingham, concludes as follows:— 'Whereof I am sorry that he and some betters had not beine hanged.'

The breaking of the assurance in this instance, then, was due to a private grudge of the Warden's, accentuated by political animosity, and in the celebrated fight on the Reidswire it was the pride[1] of the English Warden that provoked the encounter. The place of meeting was on the Border, somewhat east of Carter Fell in the Middle March, the year 1575, the Scots Deputy-Warden, Sir John Carmichael, and the English Warden, Sir John Forster.

The Court had been called, and cases were being

[1] The Warden of the East March, Lord Hunsdon, was evidently animated by the like sentiment, for he writes thus concerning the occurrence: 'The names of the takers of Sir John Forster, and the rest given in were a set of beggarly harlotts and sheep-stealers not worth the hanging.'

heard and wrongs redressed, when an Englishman (Farnstein), a notorious offender, was demanded by the Scots Warden to be delivered up, according to March Law, to be the prisoner of the owner of the goods stolen until such time as satisfaction should be given for them.

Farnstein had been 'fouled' on the bill, but on Forster's not delivering him up Carmichael expostulated, and Forster replied with evident resentment. This was at once noted by his followers, who backed him by letting off a flight of arrows.

The Border minstrel in the well-known ballad thus describes the sudden outbreak :—

'Carmichael bade them speik out plainlie,
And cloke no cause for ill nor good:
The other, answering him as vainlie,
Began to reckon kin and blood;
He raise, and raxed him where he stood,
And bade him match him with his marrows:
Then Tindaill heard them reason rude,
And they loot off a flight of arrows.

Then was there nought but bow and speir,
And every man pull'd out a brand;
A Schafton and a Fenwick thare:
Gude Symington was slain frae hand.
The Scotsmen cried on other to stand,
Frae time they saw John Robson slain—
What should they cry? The King's command
Could cause no cowards turn again.'

Again, one of the latest and probably the most daring and celebrated Border exploit of all was concerned with the violation of the assurance given at a 'day of trews.' This resulted in the famous breaking into and taking out of Carlisle Castle in 1596 of 'Kinmont Will' by the Lord of Buccleugh.

A Wardens' meeting had been arranged at 'the Dayholme of Kershope' for the Western March of England by Lord Scrope, and for Liddesdale by Sir William Scott, the Laird of Buccleugh, the Keeper, who had been raised to the footing of a Warden by King James.

The business had been concluded, and the various parties departed amicably, in full assurance of the truce, when sundry of the English as they rode by the bank of the Liddel noted 'Kinmont Will,' an Armstrong against whom they had many an old complaint, 'riding on his ways with only three or four in companie' along the opposite bank.

This was an opportunity not to be missed—'the chance of a lifetime'—and forthwith 'they brake a chase of more than 200 men out of the English trayne, chases the said Wm. of Kininmouth more than 3 or 4 myles, come to him, and take him prisoner, bring him back to the deputie, thinking to doe good service by the seizing of such an offender,' and carried him away captive to Carlisle. Whereat

Buccleugh, a proud and fierce young man—himself, as the Commissioners reported to Burghley, '*flagellum Dei to his miserably distressed and oppressed neighbours*'—was highly indignant, and, finding himself unable to get redress from the opposite Warden, took the law into his own hand, and headed a Warden's raid into England to deliver 'Kinmont Will' from Carlisle Castle.

The famous ballad tells how the release was effected, and concludes with a vivid picture of Lord Scrope, the English Warden, standing in astonishment by the river side watching the Scots 'riding' the flooded Eden on their triumphal return to Scotland.

'All sore astonish'd stood Lord Scrope,
He stood as still as rock of stane;
He scarcely dared to trew his eyes,
When through the waters they had gane.

He is either himsel' a devil frae hell,
Or else his mother a witch maun be;
I wadna have ridden that wan water
For a' the gowd in Christentie.'

Queen Elizabeth, as every one will remember, was so highly enraged at this attack upon her castle that eventually King James acceded to her demand, and reserved the treatment of Buccleugh and Cessford[1]—

[1] This was Sir R. Ker of Cessford, Warden of the Middle March, and Buccleugh's brother-in-law.

'the two firebrands of the March'—to her single arbitrament.

Eventually Buccleugh, in default of his pledges, delivered himself up to Sir William Selby, Master of the Ordnance of Berwick, and Cessford later on entered into ward with Sir Robert Carey, Deputy-Warden of the East March, notwithstanding former quarrels. 'Such traits,' as Sir Walter Scott points out, 'illumine the dark period of which we treat.'

Yet this final agreement had only been brought off after much negotiation—long protracted—and many perils skilfully avoided.

Even at the meeting of the Commissioners to exchange the pledges at the west ford of Norham after Buccleugh had given himself up, 'one that Sessford had appoynted, shotte of a pistoll, and witheall the same man that shott the pistoll laye downen alonge uppon his horse redey to fall of, and creyed "Slayen, slayen"; with that another creyed, "Tresun, tresun": whereuppon the fraye began, and all ouer sogers on the fare seyd of the water shott to or 3 voley of shott, but it was so darke, and they so fare of as I thinke they did littyl harme'—so writes John Carey to Burghley of Cessford's 'strategem,' which might have resulted in slaughter, had it not been for the readiness of Lord Home, who commanded a large body of horsemen present there.

Enough, however, has been said to show the extreme difficulty in attaining justice, for when the Wardens themselves broke the laws of the marches why should an inferior not follow their example?

'Quis custodiet ipsos custodes?'

CHAPTER VII

THE WARDEN'S OWN COURT, OR CASES OF 'MARCH TREASON'

'He knew each ordinance and clause
Of Black Lord Archibald's battle laws
In the old Douglas' day.'
SCOTT, *Lay of the Last Minstrel.*

THE English Warden within his own march was like a king of Israel during the absence of Elijah. He had an absolute free hand in the sphere of 'March Treason,' for he could practically himself determine what was March Treason and what not.

Thus Sir John Forster, replying to certain 'charges exhibited' against him, cheerfully accepts that one which states 'that he hathe caused diverse persons to be indited arraigned and condempned in his owne dwelling house, and thereupon put to execution and theire lives taken from theme, not proclaiminge or callinge a warden courte, accordinge to the lawe or custome of the Borders.'

'He sayeth he hath doon as is mencioned, and dothe avowe yt to be laweful by vertue of his commission, to be doon in any place within the wardenrie.'

Lord Hunsdon was of a like way of thinking, and 'more given to hanging than either hunting or hawking.'

The English Warden, then, had power of life and death as he sat in his Court with his jury trying cases of March Treason, but he was not supposed to do the ordinary civil and criminal work of the judges at the Assize and general gaol delivery, though he seems to have apprehended thieves and malefactors and sent them to the Assizes[1] for their 'justification.' The 'use of March,' probably, would cover certain irregularities in so rough a district, and a man taken stealing 'red-handed,' or 'in the manner,' as the phrase ran, would pay the penalty of death at the hands either of the sufferer or the Warden without any trial at all. The difficulty of obtaining justice by proper legal method may be illustrated by the following episode:—

The Lord Dacre in 1518 'having arrested 10 of the principal thieves of Redesdale, and having put them in irons within the dungeon of Harbottle Castle, sent for the gaoler and bailiff of the shire to convey them to Morpeth.'

[1] At times, it appears, the Judges and Wardens sat together at a general gaol delivery. Ralph, Lord Eure, an inexperienced Warden, writes thus to Burghley: he desires a commission of gaol delivery and the assistance of the Council of the North or the Judges, 'I desire to keep a Warden court the next day following, for as it "toucheth life," I desire the assistance of the "gravest" of the north, and their experience in justice, to the terror of the wicked.' (*Calendar of Border Papers*, vol. ii.)

To prevent a rescue, Lord Dacre summoned his Harbottle tenantry, to the number of eighty, to which were added his own household servants. Setting out from Harbottle the prisoners were safely conveyed as far as Rothbury gate, where they were handed over to the gaoler and his escort; but the prisoners' friends, the sturdy men of Redewater, being apprised of the movement crossed the moors behind Simonside, and overtaking the convoy at a straight path in Rothbury forest, killed the bailiff and six of the escort, took the gaoler and four of his men prisoners, and having released their ten kinsmen fled for refuge into Scotland.[1]

In Scotland, however, the Warden's power of holding courts and administering punishment in his Wardenry was much more limited; in fact, 'March Treason' in the Scottish records is very rarely heard

[1] 'The Highland Men of Redesdale'

Lord Dacre in describing the event thus concludes: 'And yet that notwithstanding the said Highelandes men of Riddesdale had suche espiell and kepit them secrete and close. And at a strayt pathe mett my said tennantes, and killed my ballif of Morpeth and other 6 persones his neighbors, and took the gaoler and other iiij persons with hym and had them into Scotland, where as yet the said gaoller and some other with hym sittes in preson, whereof I have made compleynte to the Wardain, and so to the lordes of Scotland, and trustes to have remedie thereof. Ther is fled into Scotland to the nomber of xxij of the principal persons and the residue ar fledd into other partis where as yett they ar nott knowen of. And diverse other persons that cam to this same effrey I have takin in upon suyrties of ther good abering. And this is the verey troughe of the mattir.

'Thos. Lord Dacre to Wolsey, 23rd Dec. 1518, from Harbottle Castle.' See Charlton's *North Tynedale*, pp. 37, 38. (Carr, Newcastle-on-Tyne.)

of. The offences comprised under this term, so frequently used on the English Border, were doubtless much the same in either country, but their punishment rested in Scotland with the Sheriff Courts and hereditary jurisdictions of the Barons or with special Justiciars—as is shown later in Part ii. of Chapter XIII.—appointed by the King. Thus 'March Treason,' as it would have been called in England, would probably have been termed in Scotland merely 'criminal causes.'[1] By an act of the Scottish Parliament in 1587 death was the penalty to be inflicted on any Scots subject who married an Englishwoman without licence under the Great Seal; and again, by an Act of 1523 a Scottish subject who received an Englishman or woman was liable to suffer death, but the penalty would not have been inflicted by a Warden without a special commission.

On the other hand, in England these offences would be punished by the Wardens, for according to clause 2 in Mr. Bell's MS. it was March Treason 'if any Englishman hath married with any Scotswoman or confederate in friendship, without the Lord

[1] Clause v. of 'the order to be observed in the Stewart Court of Annandale' (*Leges Marchiarum*, Appendix ii. p. 190) runs as follows:—

'Item, It is appointed, that all Criminal causes, sic as assisters with England, Resetters of them and their goods, Committers of Murder, Fyre, Ravishing of Women, Stouth, and sic like, to be committed to themselves, and before all others to be taken order with, be an famous and unsuspected Assize, according to the ancient Laws of this Realme.'

Warden's license,' though it was not apparently punished by the death penalty.

Balfour, again, in his Scots *Practicks* says that it was the Warden's duty to apprehend those who had carried horses, nolt, sheep, etc., into England, and 'present them to the king's justice,' whereas the English Wardens would have themselves tried equivalent cases and inflicted punishment in their own Warden's Courts.

It would seem that the code of 'March Treason' supplemented the enactments of the Leges Marchiarum, which were, as we have already seen in Chapter v., in the first instance 'Truces and Abstinences from War' between the two kingdoms, so that it may be said to be derived from a threefold source, viz. from the Border Laws,[1] from any Acts of Parliament that dealt with the Border, as well as from the various agreements entered into by the Wardens

[1] In 1468 'the statutes, ordinances and uses of marche' were put in order and writing, and sworn to by the Earl William Douglas and 'eldest borderers at Lincluden. They had originally' been ordained in Black Archibald of Douglas's day (viz. Sir Archibald 'the grim,' Earl of Douglas and Warden of West March, who died in 1400), 'and Archibald his son's days (viz., Archibald, fourth Earl of Douglas,' 'the Tyneman,' Lord Warden General of all the Marches), in time of warfare. There are eighteen in all of these early Border Laws, and they deal with disobedience to the Warden, taking of prisoners, receiving of prisoners, 'intercommoning' with Englishmen, the sustaining of beacons, pursuit on firing the beacons, and so on. These 'uses of Marche,' originally made for the Scottish Border, seem also, or their equivalents, to have been accepted in England, for there is a copy of them in Mr. Bell's MS. (the oft-mentioned west Warden's clerk in Queen Elizabeth's reign). See *History of Westmorland and Cumberland*, vol. i. p. xli.

concerning Border rule, all of which the Warden's clerk was supposed to be acquainted with. Mr. Bell concludes his list of offences with this exhortation :—

'And he that is Clerk of this Court must have foresight and special regard, to search and learn, what new laws, orders and statutes are made from time to time, by any Act of Parliament, or at any day of Marche, between the lords Wardens of England and Scotland, concerning any law of Marches, or any other cause inquirable in this court, and add the same to his charge.'

These 'charges' of March Treason 'appear to be fourteen in number according to Bishop Nicholson's order to keipe a Warden's Court,' as quoted in the *Leges Marchiarum,* but in 'the order of keeping a Warden Court in cases of March Treason,' set forth by Mr. Richard Bell, the charges are set down as twenty-three in number.[1]

Fourteen of the clauses in the two sets of charges are alike : the nine further charges given by Mr. Bell deal with further acts of intercommuning between Englishmen and Scotsmen, which are also, of course, distinctly forbidden.

Certain of the offences might have been brought up and dealt with at a 'Day of March' or meeting of the opposite Wardens, but doubtless it would

[1] *History of Westmorland and Cumberland*, vol. i. pp. xxvi.-viii.

expedite justice to have them more swiftly adjudged at the Court of March Treason of the English Warden[1] or by the Sheriff or Stewart Courts in Scotland.

Thus the sections 8 and 9 of the March Treason code run as follows:—'Also, ye shall inquire, if any Englishman hath attempted or done anything to the breaking of the peace taken between the Queen's Majesty and the Scots Queen, or the Commissioners or Wardens, to the subjects or liegemen of the said Scots Queen, as in killing any of them, assaulting, forreying, or robbing any of them, within the realm of Scotland.'

'Also, if any Englishman have murdered, assaulted, affrayed, or robbed any Scotsman within the realm of England, coming in by the authority of the safe-conduct of the said Lord Warden, his deputy or deputies.'

The clauses of March Treason in general, then, are concerned with the intercommuning and dealing with Scotsmen to the prejudice of the march under the governance of the English Warden. They are all given in Burn and Nicholson's introduction to their

[1] The Warden's own Court

The Keeper of Tynedale appears also to have held a subordinate Court of his own, for it is stated in the 'view' of Sir Robert Bowes in 1541 that 'At the said Warke (in Tynenale) ys there a courte or lawe daye kepte at such tymes as the kep' of Tynedale doth appoynte the same.'

History of Westmorland and Cumberland, see pp. xxvi.-xxviii.

Usually about a fortnight before a Warden Court was held 'Monicion and warning' would be given thereof 'by proclamation, throughe all the marketts within the marches where the said Warden Court is to be kept, that all gentlemen, freeholders, officers, and headsmen borderers, should be attendant at the said Warden Courte (speciallye such as be bounde to appear at the same or that have any matters of complaint to be ordered there).'

The Court being assembled, the proceedings were as follows:—

'The Warden Serjeant to make an Oyez, pronouncing the words following:—

'*All men keep silence, and hear the Queen's Majesty's commission of Wardenry read.*

'After the commission is read, the Warden Serjeant must return his precept with the panel.

'That done, call, *All gentlemen that be summoned to serve the Queen's Majesty in this court, come and make your appearance, and every man answer to your names at the first call.*

'Then, when as many have appeared as will form a jury, give them the oath: first to the foreman in the words following, "*Ye shall truly inquire, and true presentment make of all things that shall be given unto*

you in charge: the Queen's counsel, your fellows, and your own, you shall keep and not disclose. So help you God at his holy dome."

'Then call the rest to the book, by four at once or more, giving them their oath in this wise:—

'"*Heard you the oath your foreman hath taken: all such oath as your foreman on his behalf hath made, you and every one of you on your behalf shall make. So help you God.*"

'Then say aloud:—

'"*Gentlemen that be sworn, come near and hear your charge.*"

'Then read them the charge distinctly as follows.'

(Here follows the first clause, dealing with treasonable intercourse with the inhabitants of the opposite Border.)

'Ye shall inquire of March treason, that is to say, where any Englishman trists or intercommuneth or bringeth in any Scotsman to come into the realm, in time of peace or war, to do any slaughter, to burn, to rob, steal, or do any other offence within the realm.'

When the charge had been read through by the Lord Warden, the jury would go apart whilst another Oyez was made, calling:—

'All men that have any complaint or bills concerning matters triable in this Warden Court, come and put them in, and ye shall be heard.'

Then recognisances were to be called and sureties taken; the jury return with their bills.

The prisoners are brought to the bar and addressed by the Warden:—

'A. B., thou art here indicted, for that thou, etc.' (here the indictment is read).

'How sayest thou by this March treason, art thou guilty, or not guilty?'

If he pleaded not guilty he was to be tried 'By God and the Country.'

He is then confronted with the jury and asked what he could say for himself.

Another Oyez is now made, and the Warden addresses his jury:—

'*Gentlemen that be sworn for delivery between the Queen's majesty and the prisoners at the bar, come near and hear your charge.*

'*Your charge is, to inquire and find, whether A. B. prisoner at the bar be guilty or not guilty of the March treason he standeth indicted and arraigned of, and whether he be fled upon the fact done or not, and if you find him guilty, then what lands, goods, and tenements he was seized of at the committing of the said treason or flying, in the shire or elsewhere within the realm, and of what value they were.*'

Then follows a call for any man who will give evidence for the Queen's Majesty. If the jury find

the prisoner guilty the Lord Warden calls him by name, and, bidding him hold up his hand, thus addresses him :—

'*Forasmuch as thou A. B. hast been indicted of March treason, and thereupon arraigned, and pleaded not guilty, and put thyself upon God and the country, and they have found thee guilty: wherefore this court doth accord thou shalt be had hence unto the place from whence thou came, and from thence to the place of execution, and there to have thy head smitten from thy body according to the law of the Marches.*'

The Warden then commands his officers to 'see execution done upon these persons, according to the law of Marches, at your peril.'

Then the Lord Warden might, if it pleased him (and we can imagine one possessed of 'a port or a presence' or a good voice being much pleased with the opportunity), 'exhort the prisoner in this wise: or let some godlie man instruct theym.' The following exhortation is taken from Bishop Nicholson's *Leges Marchiarum* :—

'Ye that are adjudged by ordre of Lawe of this Realme to dye, remember that ye have but a short tyme to leve in this world: therefore Earnestly call to God, with penytent harts, for Mercye and Forgiveness of your Synnful Lyves: repent ye have broken God's commandment, and be sory therefor: and for

that ye did not feir the bretche and dangers of the Lawes, therefor, youer bodies must suffer the paynes of Death, provided to satisfye the rewarde of your fact in this world: yet the Salvation of youer Saulles healthe, for the world to come, stands in the great mercye of Almightie God: wherefor do ye earnestly repent, and ask mercye for yower synnes, now when ye are levynge, put yower trust to be savede by the merits of Crists passion; and think in youer harts yf ye wer able to recompense theme ye haive offendit, ye wold do it: and where yowe are not able, aske forgiveness; Have such faithe in god's mercye as Dismas the thefe and man murderer hade that hung at Crists right hand, when he suffrede his passion for the redemption of mankynde: whos faith was so great he shoulde be saved, *his synnes wer remytted, tho he had but short time of repentance, and he enjoyede Hevyen.*

'*Therefor despayr not in God's mercye, tho yower sinnes be great, for God's mercye excedith all his workes. Set apart all vanities of the World, and comfurth yowe in hevynlye things; and doubt not but, yf ye so doe, ye shall inheryt everlasting joy in the kingdom of Hevyn. And thus I commytt yowe to the mercye of Gode, wishinge yower deathes may be exemple to all Parynts to bring up theyr childre in the Feyr of Gode, and obidience of the Lawes of this realme.*'

After which instruction the prisoner was taken from 'the Barre,' and the Court was adjourned by the Lord Warden.

'*All manner of men that have more to do at this Court, before my Lord Warden: keip yower day here upon a new warnynge; and so for this tyme depart in Gods peace and the Quenes.*

'*God save the Quene.*'

From the foregoing it would appear that death was the penalty in every case of March Treason, but apparently in later times this was only inflicted for the graver offences of felony.

Indeed, that death could not have been the invariable penalty for March Treason is proved by the fact that Sir Robert Bowes gives 'another forme for offences which be not punishable by deathe,' the form of indictment seeming to vary in this event and to be without the words *proditorie* and *contra pacem Dominae Regis et leguntiam suam.* The instance he gives is of an Englishman intercommuning with a Scotsman and selling him a 'horse coloure baye contrarye to the lawes and statutes of this realme of England and his dutie of obedience to the same.'

According to the apocryphal story of Lord William Howard of Naworth (Sir Walter Scott's 'Bauld Willie,' who yet was never a Warden), that gentle and studious nobleman was horrified to see the corpse

of a moss-trooper swinging from a tree beside the Bailey as he went forth to take the air, and still more to be informed that his testy exclamation, 'Oh, hang him!'—on being interrupted in his studies—had been literally applied to the *corpus vile* before his eyes.

The majority of Lord Wardens would have cordially agreed with Lord Braxfield that a Border pricker or moss-trooper would be 'nane the waur of a hanging,' and would have often anticipated by their deeds the Border Law of 1596, that ran as follows:—

'The most sufficient and discreet Borderers' of the marches of either realm are to 'make diligent enquiry and tryal of all notorious thieves and robbers within their Wardenry.' A copy is then to be handed to the Warden, 'who shall, upon the first attempt that shall be truly tryed and fyled upon ane of them hereafter, put the said offender immediately to death.'

CHAPTER VIII

PART I

THE ORDER OF THE DAY AND NIGHT WATCHES 'ENDLONG THE BORDER' FROM CARLISLE UNTO BERWICK

THE FORD

1st Watchman. O Watcher at the ford, your streams run low,
Did any rider cross? Did any go
Your way beneath the moon?

2nd Watchman. The moon is young. I saw the crescent stoop
Till imaged in the pool her silver loop,
No more—she set too soon.

1st Watchman. O Watcher, heard you at the strait no sound
Of feet that stumbled on the stony ground,
Where one might take the hill?

2nd Watchman. I heard the water wash among the weeds,
A hunting otter rustled in the reeds,
Naught else—the night was still.

1st Watchman. The night was still, I rode beside the stream.
Heard you no cry? I saw a lanthorn gleam,
For what searched you the wood?

2nd Watchman. There screamed some vermin tangled in a snare,
It was a thieving fox that I found there,
And flung him to the flood.

1st Watchman. O Watcher, where you marked the drift-wood ride
The flood, saw you naught else go down the tide?
At dawn the spate rose high.

2nd Watchman. Above this ford you know the haughs are green,
And many cattle graze. I may have seen
A foundered steer go by.

MARNA PEASE.

If any one were in doubt as to the perpetual unrest upon the Border he need but turn to the 'Orders of the Watches' upon the West, Middle and East Marches made by the Lord Wharton, Lord-Deputy General of all the three Marches, under my Lord of Northumberland's Grace, Lord Warden General of all the said Marches, in the month of October, in the sixth year of the reign of our Sovereign Lord King Edward VI., for therein he will note that the entire line of the Border was to be watched both night and day. In the day-time the watches were set upon the heights so as to guard the various tracks or passages; at night the fords over the various rivers were chiefly guarded. Any 'true men known, and that proved' coming within those waters are to be allowed to depart; if unknown, they are to be brought to the 'Baylifs and Constables to be tryed.' There, if not 'labouring in their true and lawful business,' they are to be sent to gaol, and finally tried by the General, the Deputy Warden, or by the Justices of Peace of these counties. (*Leges Marchiarum.*)

These watches were 'to begin the first night of October, and to continue unto the sixteenth day of March: and the same sooner to begin, or longer to continue at the discretions of the General, or of the Deputy Warden for the time being.'

The night watch had 'to be set at the Day-going,

and to continue unto the Day be light; and the Day watch, where the same is, to begin at the Daylight, and to continue unto the Day be gone. And, if any Person or Persons disobey any of the said Watchers, Baylifs, Constables, Setters, Searchers, or Overseers, in, or for the execution of the said Watch, in any manner of wise: he or they so disobeying to be brought to the king's Highness gaol, there to be punished at the discretion of the General, or of the Deputy-Warden for the time being, where such offence shall be done.'

The Borderers were said to be without any knowledge of the Sixth and Eighth Commandments, and when they prayed—as Bishop Lesley assures us they commonly did before running their 'forays'—cattle rather than 'daily bread' would be the object of their desire. It will be noted that the watches were only set during the winter months; but even during spring and summer, when 'trade was slack' and they turned to pasturing their cattle about their 'shiels' on the hill-tops, there was constant danger of 'nowt,' sheep, nags or goats disappearing, and of 'the fray' being brought to the door of the quiet householder. Yet there was a distinct respite during these months, and the inhabitants must have been glad to be quit of the weary and dangerous duty of guarding by day and night the passages and fords along the Border.

This was no light duty that the inhabitants of the various townships had to perform, and the 'setters and searchers of the watch,' who were the gentry of the immediate countryside, had to see that the watchers duly performed their watch and ward, under pain of being themselves fined for neglect.

Thus endlong the Border the ward and watch were set—chosen from the members of each township—guarding passage and track, water and ford through the twenty-four hours. Two men usually formed the watch; and as they stood, grumbling and cheerless, in the dark night, a voice might suddenly hail them, and two searchers might ride up to make a hasty inspection, and return through the sleet of a winter's storm to their warm inglenook within their Pele towers. Further, there was an overseer sometimes as well, and every energetic land serjeant or Warden's officer or 'King's Highness Servant' would be interested in seeing that the watches were duly kept.

Thus at Cryssopford, for example, the four watchers there might at any time during a winter night be in danger from a sudden raid from Liddesdale. Perhaps the Elliots or Armstrongs would be riding to avenge a 'deadly feud,' or the Robsons of Tynedale to 'learn them' a lesson in manners, and impress on their memory that the '*next time gentlemen came to take their sheep they were no to be scabbed.*' Then again

beside the Earl Seat the two shivering watchers might be swiftly set upon by a plump of Scots under the leadership of Buccleugh (the 'flagellum Dei' as the Commissioners reported him to Burghley), who might be coming to demand his sword, which the Charltons kept at Hesleyside Tower. They stood in almost as many perils as St. Paul, these watchers, since for any shirking in the fighting—which was dangerous enough in itself—they were liable to the penalty of 'March Treason,' viz. a heading or hanging at the Lord Warden's hand. Lest, however, the modern should revolt over the barbarousness of the past, we must remember that even in our own day the police have to keep watch and ward throughout our towns, and that every night coastguardsman meets coastguardsman along the length of our coast.

Human nature remains much the same throughout the ages. Thieves have gone from the countryside and now congregate in the towns.

An interesting point as to these watchers and searchers, who are individually named by Lord Wharton in his 'Orders of the Watches,' is that their descendants still inhabit the same district, so that if unhappily the same necessity still existed the same names would often appear in the Warden's lists.

For example, 'in the order of the Day Watch for North Tyndaill' it is ordered that, 'The inhabitants of

the Newtons, Charlton-yaite, Charlton, Langhaughe, the Redyns, Ryding, the Shaw, and [Billingham] Bellingham shall watch at the Whythughe with 2 men in the Watch: William Charlton of Billingham, and John Robson, to be Setters and Searchers of that watch'; and any one reading this and being acquainted with North Tynedale will recognise in the names of the setters and searchers two representatives of the 'four graynes' of old time who still flourish about Bellingham in the twentieth century.

This Lord Wharton—the organiser of the watch and ward—was one of the Tudor 'new men' who swept with a hard besom; and it is with a sort of Roman military precision that he parcelled out the Southern Border into its day and night watches along its entire length. Not only are the watchmen, as well as the 'setters and searchers,' specified by name throughout, but letters were written by him to the chief gentry 'to see and cause the watch to be set, searched and kept in due order, as particularly in every charge hereafter appeareth.'

One set of his letters given from the castle of Carlisle ran as follows:—

'*After my hearty commendation, I doubt not but you see the watches surely set and kept from—unto—in such form as the same heretofore hath been accustomed, and by open proclamation commanded; nevertheless,*

for the better execution, and that none offenders therein shall have none excuse for lake of warning, I shall require you on the Kings Majesties behalf, to give such notice and knowledge to all the Townshipps through the said Watches, as they may be most surely kept at their perils, least by privy search the fault be found, which will run to the extreme punishment of the offenders, according to the Kings Highness Laws.

'Fail you not thereof, as ye tender his Majesties pleasure, and the commonwealth of his grace's subjects, and heartily fare you well.'

As Captain of Carlisle and Warden of the West March, then as Deputy-Warden General of the three Marches, and finally as Warden of the Middle and Eastern Marches—to which he had been transferred owing to a 'deadly feud' with the Maxwells for hanging their 'pledges'—he had an unrivalled experience of Border life.

There is also given in the Appendix to the *Leges Marchiarum* a further copy of 'Letters from my Lord Wharton, for search of the said watches upon the Middle Marches; with the Kalendar of the Gentlemen Searchers and their several Circuits,' given from the 'Castle of Alnewyke.'

Again, there is a copy of several commissions 'of his to certain gentlemen for the damming and stopping sundry Fords and Passages upon the waters

of South Tyne, North Tyne, Reyd and other waters and passages by land in Northumberland.'

Finally, in the same book is also a copy given of his instructions for inclosings and hedgings within the limits and bounds of Northumberland, with the several circuits and the names of the gentlemen put in trust for the execution of the same; this was for 'the advancement of his Highness' Service and the preservation and commonwealth.'

This seems not to have been carried out save on the Western Border—the time was not ripe yet for such peaceful ideals—but various suggestions in his final survey of the three marches to his superior, the Lord Warden General, Northumberland, doubtless bore fruit.

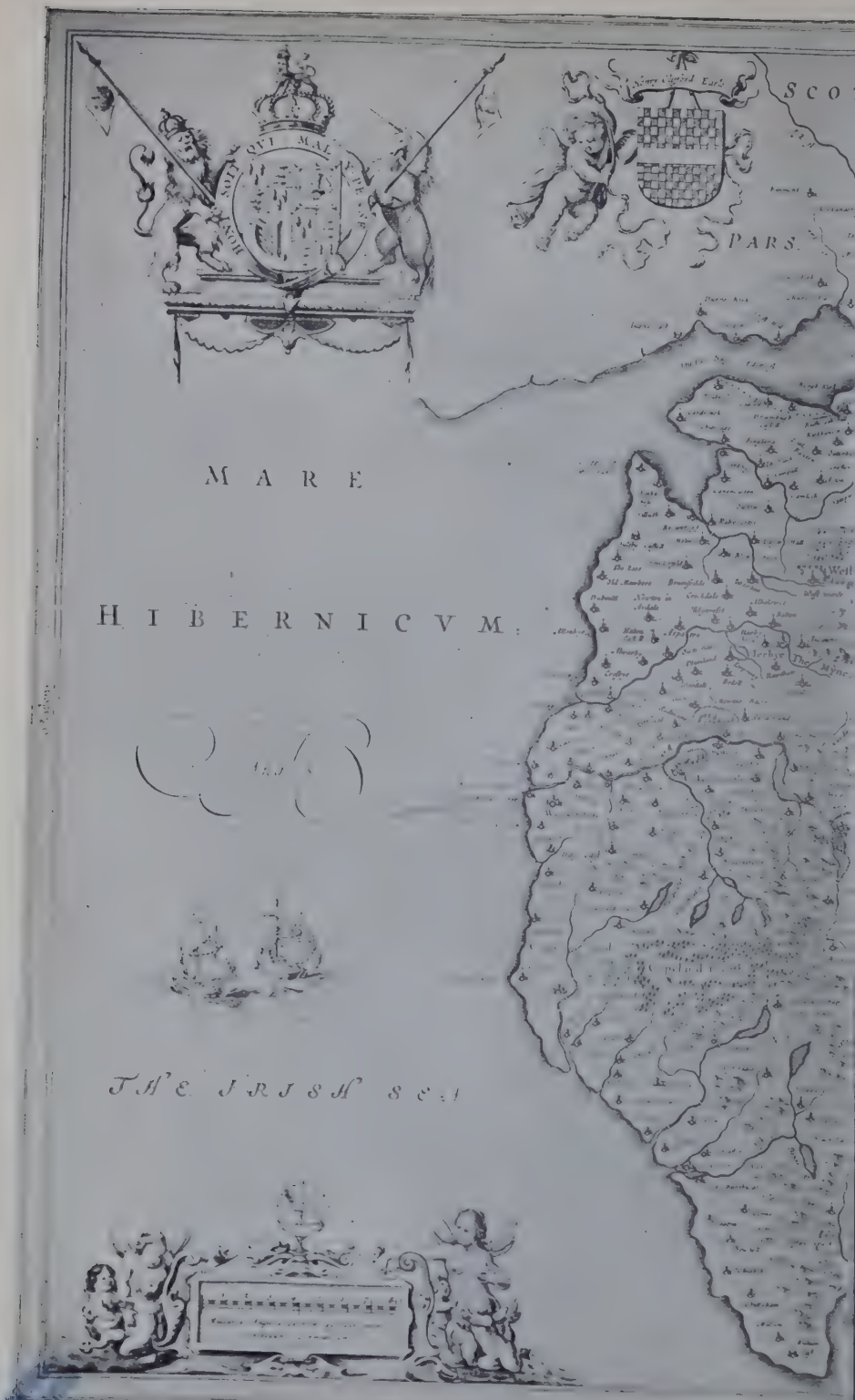
It is evident, therefore, how thorough Lord Wharton was in his office, and it is highly interesting to read through these orders of his for the various watches, for you will encounter at the various fords, passages and crags many well-known 'names,' and meet among the 'setters and searchers' representatives of many ancient families. The extreme Western March seems to have been in the charge of the Barony of Burgh, Cardronocks watching to Bowness, Bowness to Glasson, and Glasson to Drumburgh, etc.; but the orders start with, '*Beginning at the foot of Levin, and so up, Esk to Liddisdaile: in Esk,* 8 *several*

Watches to be appointed, and in every watch 2 *men.*'

At Bamburgh the order of the watch for the East Border ends thus, 'The Town of Bamburge keeping watch with 2 men nightly, and to watch between Hoppen and Luckerford,' the day watch finishing at Carham, 'Charram, to watch Chillaw with one man on the day.'

There were yet 'Watches alongst the water of Tyll' and the 'Water of Twede' to be enumerated, and finally thirty-nine fords on the water of Tyll, 'which the tenants of the foresaid Townes will damm and stop, because they are not able to watch them.'

'*Plump*' *Watches* are also occasionally mentioned in connection with keeping order throughout the country, though the term is not used in the *Leges Marchiarum.* A 'plump watch' (cp. a 'plump of spears,' a 'plump shower') would seem to have been an extraordinary watch, set when the country was especially disturbed, and consisting of a considerable number of men, viz. forty, as in those set by Edward Gray, Constable of Morpeth, who wrote as follows to the Warden (Lord Eure) concerning the outrages of 'house thieves on forraine borderers':—he had arranged for 'the plump watch in 7 places to be kept by as many gentlemen of the ward—and att



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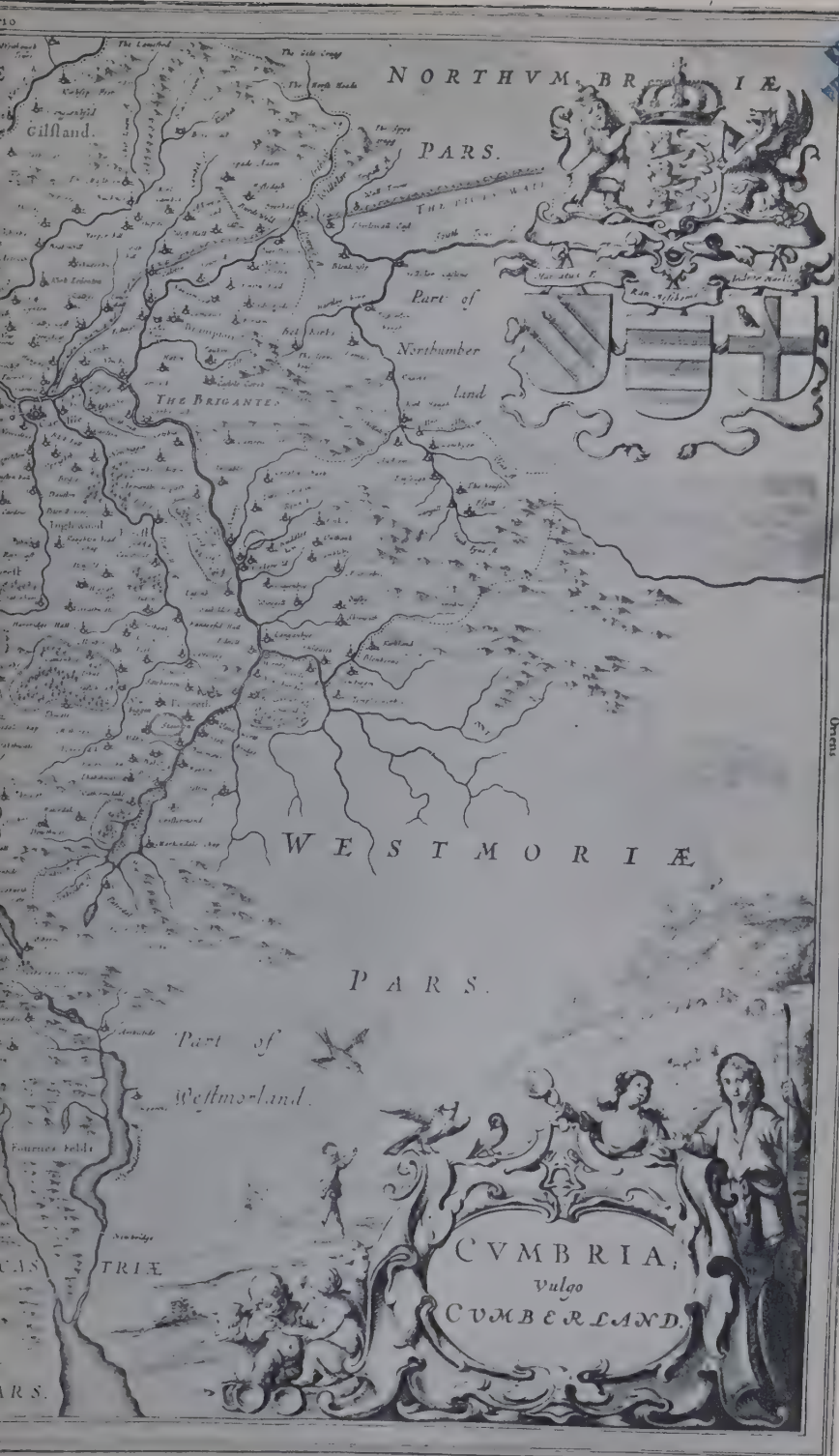
III.—MAP OF CUMBERLAN


NORTHVMBRIÆ
PARS.
Part of
Northumber
land
THE BRIGANTES
WESTMORIÆ
PARS.
Part of
Westmorland.
CVMBRIA,
Vulgo
CVMBERLAND.
Ostens

every place everie leader to chouse oute XL men out of his divisyon.'[1]

Again, William Selby the elder, writing to William Selby the junior, says, 'None of your friends dare lie in their beds at night, but hide themselves in the fields, except such as lie in towers'—on account of Cessford's harryings—'I then desired Sir Robert [Carey, the Warden] to make the countrie keep "plump watches," but nothing was done.'[2]

PART II

THE ROUTES OF THE RANK-RIDERS, OR PATHS OF THE RAIDERS

'They rode the moon out of the sky,
Their hoofs drummed in the dawn.'
R. KIPLING.

Reparabit cornua Phoebe, the motto or slogan of the Scotts, would be eagerly repeated by their followers when the Michaelmas moon—that was to dower their daughters—showed golden upon the fells.

Now to ride by the light o' the moon across the wastes and flows of the moors and grass lands is no easy undertaking, and the first requisite is an entire knowledge of the tracks that run dark and devious

[1] *Calendar of Border Papers*, vol. ii. p. 452. [2] *Ibid.*, vol ii. p. 213.

amongst the heather, and through the peaty bogs, where often indeed the only safety lies in dismounting and leading your horse by the bridle, even as Hobbie Noble of old according to the ballad.

> 'He has guided them o'er moss and muir,
> O'er hill and hope, and mony a down;
> Until they came to the Foulbogshiel,
> And there, brave Noble, he lighted down.'

In an interesting leaflet (No. 287) of the Historical Association on 'Some Influences of the Geography of Northumberland upon its History,' it is sought to show that the routes taken by the forayers of old were largely chosen out of geographical considerations.

Thus a 'Raider's Line' is given as from Carham on the Tweed to Chollerford via Harbottle. Doubtless for an army equipped with ordnance good roads, and passes, and gaps through the hills are of first importance, but the raiders on their little horses, and knowing the moors very well, were able to 'run their raid' and 'drive their prey' by tracks right across the fells.[1]

Though these raiders seem to have come from all quarters, as evidenced by the fact that all the high ground was watched during the day, and the fords at

[1] The writer was once advised by a well-known Borderer, in the event of his not knowing his way from one place to another, to 'keep always the crown of the hill,' which experience has shown to be very good advice.

night, yet, doubtless, there were certain favourite places where the marchmen 'most did congregate.'

Thus Bewcastle dale and Spade Adam 'waste' were open spaces where the 'spate' of Scottish 'Hobilers' came pouring through. Lord Dacre wrote to Cardinal Wolsey in 1528 as follows:—

'Like it also your grace, seeing the disordour within Scotland, that all the mysguyded men, Borderers of the same, inhabiting within Eskdale, Ewsdale, Walghopedale, Liddesdale, and a part of Tividale foranempst Bewcastledale and a part of the Middle Marches of this the King's Bordours, enters not this West and Middle Marches, to do any attemptate to the King our said soveraine's subjects; but thaye come thorow Bewcastelldale, and retornes, for the most parte, the same waye agayne.'

Again, take the following passage from Musgrave's report on the Border riders to Burghley in 1583 and you will find another route given for Liddesdale. 'When Leddisdall people make anie invacions to the Fenwickes, they goe without (viz., outside, or east of) Bewcastell xi or xii myles, and goe by the Perlfell without the Horses heade nere Kelder, and so alonge abone Chepchase.

'When they goe to the water of Tyne (viz., the South Tyne), they goe by Kyrsopp head, and without the gele Crage, and by Tarnbek and Bogells gar and

so alonge by the Spye Crage, and the Lampert, and come that waye.'

Again, as Sir John Selby writes to Burghley a few years later—the Liddesdale men rode also into the East March—'These Liddesdale men are the most disordered of all the Border, they come in great bands through Tevedall and the Marc (Merse) into these East marches, and return with their booty quietly the same way, without resistance, for they have no warden to answer for them by Border Law.'

There was an old Border proverb concerning the men that dwelt within 'the swyres' of the Liddel, which was evidently drawn from bitter experience, for 'to ride night and day like the Liddesdale men' was a common expression.

There were along the Middle March alone no fewer than forty-four 'passages and byeways for the theefe,' as you may read in No. 853, *Calendar of Border Papers*, 1597, wherein is set forth a 'breafe of the bounders wayes and passages of the Middle Marche all along the border of Scotland, beginning att Chiveat hill being the lemyet of the Easte Marche and ending att Kirsop the bounder of the West Marche of Englande.'

CHAPTER IX

BALES AND BEACON FIRES

'Et insuper ad signa, vocata Bekyns, in locis consuetis, per quae gentes Patriae de adventu inimicorum proditorum et rebellium praedictorum congruis temporibus possunt praemuniri, poni et supervideri ac separari et emendari faciendum.' RYMER, *Foedera.*

'As stars arise upon the night,
They gleam'd on many a dusky tarn,
Haunted by the lonely earn;
On many a cairn's great pyramid,
Where urns of mighty chiefs lie hid;
Till high Dunedin the blazes saw,
From Soltra to Dumpender Law;
And Lothian heard the Regent's order,
That all should bowne them for the Border.'
SCOTT, *The Lay of the Last Minstrel.*

THE watches were set along the English Border between Berwick and Carlisle, but the Scottish watch and ward extended far to the west of this, stretching into Annandale, whilst bale fires were to be lit even as far west as Gallow Hill in Moffat parish. In the earliest code of the 'statutes, ordinances, and uses of March' (*temp.* 1468), mentioned in Chapter VII., the beacons are named and their sustentation enjoined.

Again, we read in the Appendix to the *Leges Marchiarum* that the 'ane wise stout man' who kept the House of Howdam has 'assuredly to take heed,

that the watch-house of Trailtrow be keeped by the watch thereof: and in time of warfare, the Beaken, as is devised, that is even in Weir, and in Peace, the watch to be keeped on the House-head and in the Weir, the Beacon in the Firepan to be keeped and never faill burning, so long as the Englishmen remain in Scotland; and with ane Bell to be on the Head of the Firepan, which shall ring whenever the Fray is, or that the watchman seeing the thieves disobedient come over the water of Annand, or thereabout, and knowes them to be enemies: and whosoever bydes fra the Fray, or turns again so long as the Beaken burns, or the Bell rings, shall be holden as Partakers to the enemies, and used as Traitors to the Head Burgh of the Shyre, upon the Court day, and thereafter intimation made in the Parish Kirk, and published on ane Sunday, in presence of the People, and fra thenceforth to be used as a fugitive, and disobedient Person.'

And in 1587 an act of the Scottish Council orders the lieges to 'keip watch nycht and day, and burne bailles acording to the accustomed ordour observit at sic tymes upon the bourdouris.'

In England bale fires or beacons were ordered by Edward I. to be ready prepared against and instantly lit on the approach of the Scots to the county of Lancaster. His precept to the Sheriff of Lancaster

runs thus: '*Praecipimus etiam tibi, quod super cacumina parari facias cumulos lignorum et turbonum, ut cum alicui parti comitatus de adventu Scotorum constiterit, statim rogos et crematione de illis lignis et turbonibus faciant pro universali præmunitione dicti Comitatus.*'

This is given in the Appendix to the *Leges Marchiarum*, and is taken from the records of Edward I. It is also said that similar instructions were sent to the Sheriffs of Northumberland, Westmoreland and Cumberland, 'consimili modo, mandatum est Vicecomiti Northumbriar, Westmere. Cumbr.' At a later date the places specially appointed for beacons were, in Cumberland—*Blackcomb, Boothill, Mulcaster Fell, St. Bees Head, Workington Hill, Moothay, Skiddaw, Sandale Top, Carlisle Castle, Lingy Close Head, Beacon Hill, Penrith, Dale Raughton, Brampton Mote and Spadeadam Top*; and in Westmoreland, upon the top of *Stanemore, Orton Scar, Farleton Knot, Whinfell Fell, and Hardknot.*

On the East March of Scotland beacons were maintained according to a statute in 1455, as Sir Walter Scott writes in the *Border Antiquities*, at 'Hume Castle, at the Tower of Edgerhope, or Edgerstane, near the source of the Jed, upon the ridge of the Soltra Hills, at Dunbar, Dunpender (or

Trapraine) Law, North Berwick Law, and other eminences: and their light was a signal for the Scottish forces to assemble at Edinburgh and Haddington, abandoning to waste and pillage all the southern counties.'

On the West March of Scotland 'the Beacons to be sustained' are set down as follows:—'It is found statute and used in time of warfare, with respect to bails burning and keeping, for coming of an English host into Scotland, there shall a bail be burned on *Trailtrow-hill*, and another on the *Penchat-hill*, and on the *Bail-hill* above the *Hame-ends*, one on the *Cowdens* above *Castlemilk*, one on *Quitsoun*, one on *Drysdail*, and on the *Burraw Skenton* in *Applegarth parish*, one on the *Browan Hill*, and one on the *Bleis* (Blaze Hill) in the tenement of *Wamphray*, one on the *Kindol-knok* in the tenement of Johnstoun, one on the *Gallow Hill* of Moffat parish, and 5 in Nithisdale, one on the *Wardlaw*, one on the *Rahachtoun*, one on *Barloch*, one on the *Pittane hill*, one on the *Malow hill*, one on *Corswinton*, one on the *Corsell*, one on the fell above *Dowlbark*, and one on the *Watchfell*: and to cause these bails to be kept and made, the Sheriff of Nithisdale, the Stewart of Annandale, and the Stewart of Kirkcudbright in Galloway shall be debtors: and who so keepeth not the bails, shall pay for each default one mark.'

The crests of all the high hills on either side were thus furnished with their beacons, which would unfurl upon the midnight sky

> 'The blood-red flag
> All flaring and uneven.'

In the year 1588 the sentinel upon Carlisle Castle might well doubt, as he caught sight of the 'red glare of Skiddaw,' whether it were the advent of Spain that was being heralded or only that of 't'oald enemy,' Scotland, but if, as he stood doubting, his eye could catch the prospect of smaller flames lighting like glow-worms the nearer leas and fells, he would conclude, with a sigh of relief, that it was only Scotland, and rejoice that he at least was safe within the walls of 'merry Carlisle,' and so himself be safe from being 'spulzied.'

As on a day of jubilee the beacons flash their joyous message from hill-top to hill-top throughout the land, so in time of war did the bale fires foretell with fiery tongue the coming of 'the fray,' which was repeated from mountain to hill, from hill to Pele Tower, and from Pele to hamlet, throughout the centuries of Border war. For we read that in 1570 an order was issued to the Wardens of the East and Middle Marches of England by the Earl of Sussex, Lord President of the Council of the North, as follows :—

'Everie man that hath a castle or a tower of stone shall, upon everie fray raysed in the night, give warning to the countrie by fire in the topps of the castle or tower in such sort as he shal be directed from his warning castle, upon paine of 3s. 4d.'

'They watch, to hear the bloodhound baying:
They watch, to hear the war-horn braying;
To see St. George's red cross streaming,
To see the midnight beacon gleaming;
They watch, against Southern force and guile,
Lest Scroop, or Howard, or Percy's powers,
Threaten Branksome's lordly towers,
From Warkworth, or Naworth, or merry Carlisle.'

SCOTT, *The Lay of the Last Minstrel.*

CHAPTER X

THE VARIOUS 'NAMES,' 'GRAYNES' AND CLANS INHABITING THE MARCHES OF EITHER REALM

'The Scot and Ker the mid Border did possess,
The Humes possest the East, and the Johnstons the West;
With their adjacent neighbours, put the English to more pains,
Nor half the North, and all three Lothians.'

CAPTAIN SCOT OF SATCHELLS,
History of the Name of Scot.

ON the Scottish Border the clan system was more in evidence than on the English side, blood relationship to a remote degree being acknowledged in Scotland by the head of the family far more readily than in England. This may be said to hold good even at the present time in the Highlands, and probably the reason for it was the wildness of the country and the frequency of fighting—not only against the 'auld enemy' but amongst themselves—to which the *per-fervidum ingenium Scotorum* naturally lent itself on occasion of 'deadly feud.'

The Lord of Douglas in the time of his pre-eminence is said usually to have ridden with a retinue of 1000 horse; the Scots could bring 500 men to the field and the Kers as many as 3000.

In the Raid of the Reidswire, it is true, we read of

'500 Fenwicks in a flock,' but as a general rule the names or 'graynes' in England were neither so numerous, nor so powerful, nor so homogeneous as the clans in Scotland, for the English throne, as was pointed out in an earlier chapter, was the more firmly established, and after the Wars of the Roses could tame any rebellious baron without difficulty, so that the king rather than the chieftain was in England the bond of union.

As to the clans inhabiting the Western Border of Scotland, Edward Aglionby writes to Burghley in 1592 (*Calendar of Border Papers*) as follows:—

'The countrie of Annendale [Annandale] is stronge by theire great and many surnames, as Maxwelles, Johnstons, Armestronges, Irwaines, Bells, and Carlelles (Carlyles, forbears of Thomas Carlyle). Every which severall surname defende their owne.'

As for Liddesdale, 'it is the most offensive countrie against both the West and Middle Marches. The strength of this countrie consisteth in two surnames of Armestranges and Elwoodes [Elliots].

'Betwizt Eske and Sark dwelleth the surname of Johnsons, called the Johnsons of Greatney.

'Above them dwelleth Kinmont and Armestronge, and about him dwelleth an hundred able men all Armestronges. About Kirtle is a surname of Irwyns, a surname of proper men.

'Above them is a great surname of Belles and Carlilles, who hath bene longe in fede with the Irwins.'

In the north of Annandale dwell the Johnstones. 'Towardes the meetinge of Annan and the water of Milk, and of both sides thereof all Loughwood, dwelleth the Lard Johnson and c c c sufficient men of his name.

'Towardes and above Dumfrize is the Lord Maxwell and Lord Harrys [Heries], and a 1000 Mauxwelles under them. They have bene in fede with the Johnsons theis many years, *which is a weakeninge of Scotland and a strength to England.*'

Then for the English opposite march he gives the following list:—

'Upon both sides of the river Esk dwell the Grames, which is the greatest surname att this daie upon the Weste Border. For the Grames of Esk and Leven are hable to make v c serviceable men. Theire dwelleth also a surname of Storyes, but they are sore decayed.

'Above Kirklinton dwelleth a great surname of Fosters, and about Hethersgill is a surname of Hetheringtons.

'In Bewcastle, theire dwelleth Fosters, Crosers, and Nixons, but sore decaied.

'In Gilsland is no great surname: the Belles is the

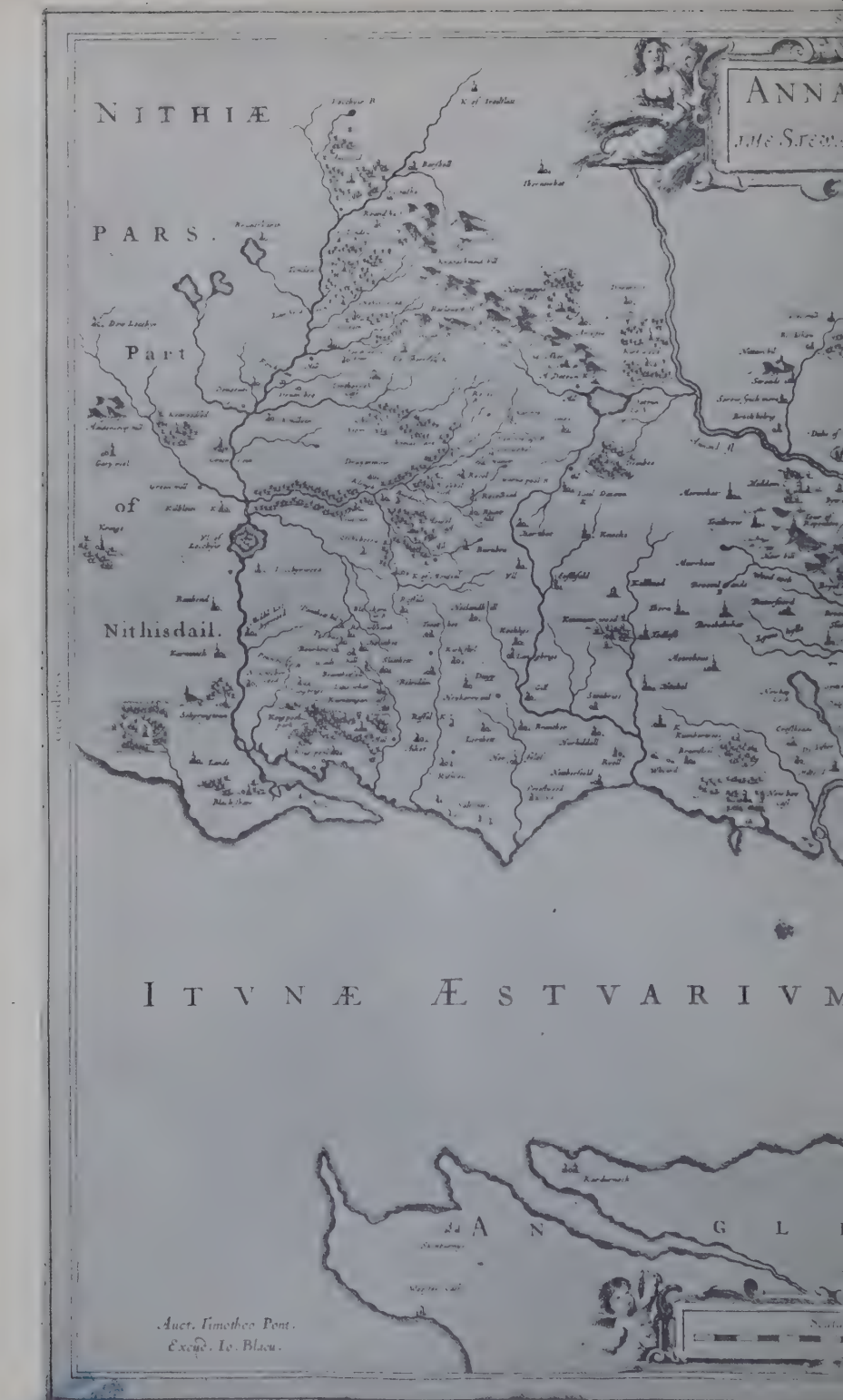
most. Theire is a surname of Milbournes and Hardens, but they are not many.'

'Brough.—Theire is four surnames theire, Liddalles, Glasters, Huntingdons, and Hodgesons, but theire is not many of none of them.'

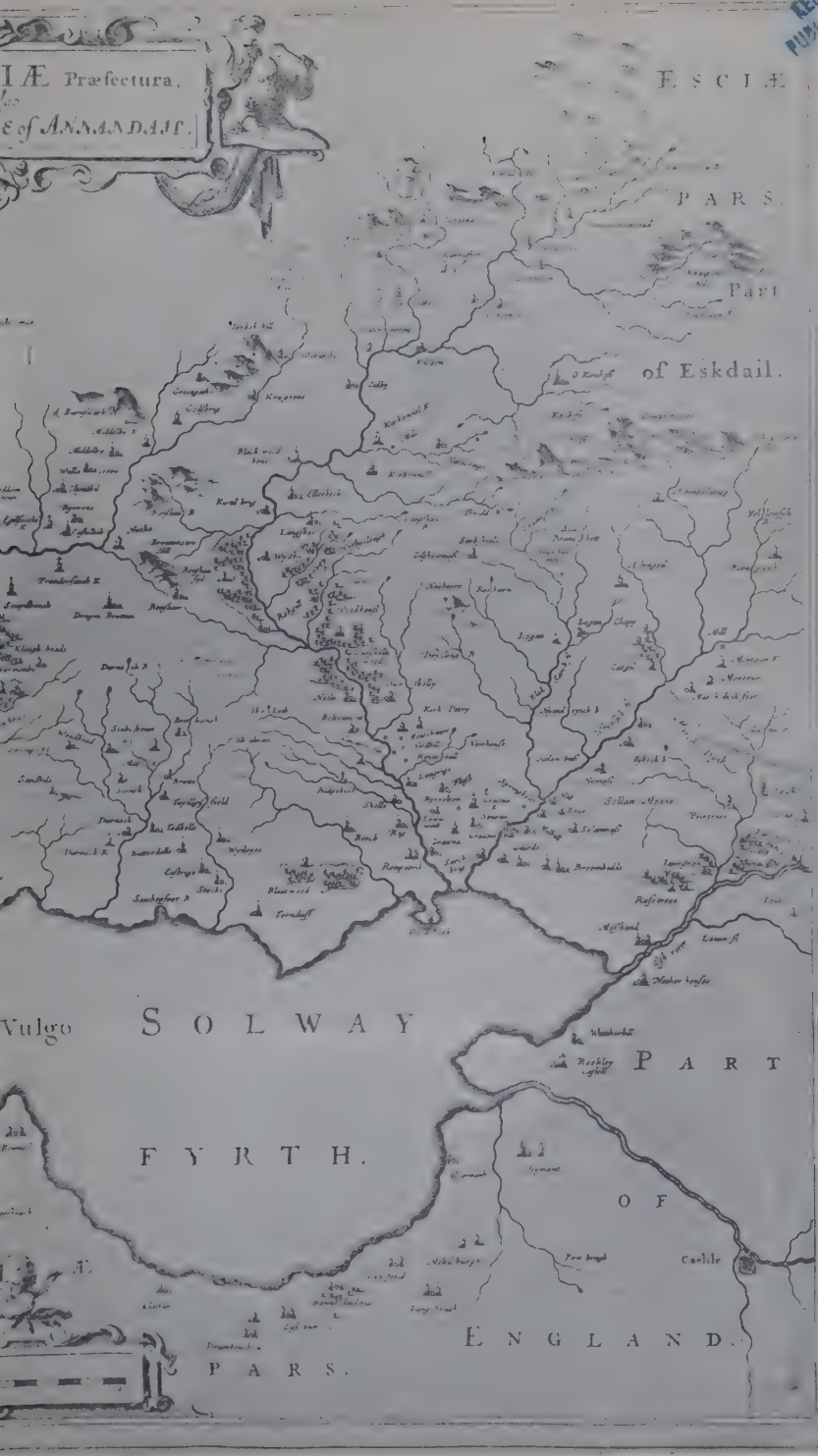
Musgrave and Salkeld.—'The greatest surname of the gentlemen within the Wardenrie is Musgraves and Salkelds.'

Aglionby reports of Ewsdale, that 'they are a civil people, and never ride in England'; and again of Teviotdale, that 'it does never offend the *West* Border,' but this is scarcely a certificate of character, for Lord Scrope, the West Warden, a few years earlier, gives in a note of '*the loosemen in the Middle Marche*' '300 gingles' in Ewsdale; and in East and West Teviotdale, 'Trombles, Ollyveres, Synsleves, Robsons, Davesons, Yonges, Burnes, Pringles 3000'; and Carey, in writing to Burghley in 1598 concerning the Middle March, says, 'Those of Tyvidale are all great riders and the worst men in the countrye.'

On the English side on the Middle March you will find in North Tynedale the well-known '4 graynes' of Charlton, Robson, Dodd and Milburn; in Redesdale there were Reeds and Halls (between whom there was an ancient feud, see the 'Ballad of Parcy Reed), Andersons, Hedleys and Potts; while in Coquetdale the Selbies, Clennells, Wilkinsons were the chief names, though not numerous enough to found clans.


NITHIÆ
PARS.
Part
of
Nithisdail.
ITVNÆ ÆSTVARIVM
Auct. Timotheo Pont.
Excud. Io. Blaeu.

KENSINGTON PUBLIC



NANDALE

We may conclude this chapter with a list of the 'Names on the Marches' taken from the *Calendar of Border Papers*, under date July 1583.

'*East Marches of England.* Gentlemen—Forsters, Selbies, Graies, Strouders, Swiners, Mustians. Surnames—Johnsons, Vardes, Ourdes, Wallisses, Stories, Armestronges, Dunnes, Flukes.

'*Scotland.* Gentlemen—Humes, Trotters, Bromfeilds, Dixons, Crews, Crinstons.

'*West Marches of England.* Gentlemen—Musgraves, Loders, Curwenes, Sawfelde. Surnames—Greames, Rutliches, Armestrongs, Fosters, Nixons, Tailors, Stories.

'*Scotland.* Maxwells, Johnsons, Urwins, Grames, Bells, Carlills, Battison, Litles, Carrudders.

'*Middle Marches of England.* Gentlemen—Ogeles, Fenikes, Hernes, Withringtons, Medfords, Shafters, Ridleis, Carnabies. Surnames—(in) Ridsdale. Halls, Hedleys, Andersons, Potts, Reades, Dunnes, Milburnes.

'Tindale—Charletons, Dodds, Milbornes, Robsons, Yaroes, Stapletons.

'*Scotland.* Gentlemen—East Teviotdale. Carrs, Yongs, Pringles, Burnes, Davisons, Gilleries, Tattes.

'Liddesdale — Rudderfords, Carrs, Dowglasses, Trombles, Scottes, Piles, Robsons, Halls, Olivers, Ludlers, Armestrongs, Elwoods, Nixons, Crosiers, Turners, Fosters.'

CHAPTER XI

THE PAYMENT OF THE WARDENS, KEEPERS AND VARIOUS OFFICERS OF THE BORDERS

'Sir Henry Percy laye at the New Castelle,
I tell you withowtten drede:
He had byn a marsh-man all hys dayes,
And kepte Barwyke upon Twede.'
'The Battle of Otterbourne.'
Northumbrian Minstrelsy.

THE various payments to the Wardens vary so considerably that no definite stipend can be set down; the rate varied with the differing number of soldiers assigned them and the varied allowances and escheats provided for them. In 1527 the Earl of Angus had £100 for the East March, and £100 for the West when Warden of the two marches.

The payment for the keeping of Liddesdale seems high when we read of £500 being allowed on several occasions.

Thus though the Scots west Warden's fee was sometimes no more than £100, the Warden in 1533 —Lord Maxwell—was receiving £100 *per month* for the keeping of Hermitage Castle and ruling Liddes-

dale, and again five years later he is only receiving £106, 14s. 4d. for four months' keeping of Hermitage.

At various times a special governor or justiciar was appointed for Liddesdale, as when Queen Mary in 1551 made Sir W. Scott her governor there; he was no doubt a law officer rather than a keeper, and was paid by the amercements and escheats, but it appears that he was not allowed any paid soldiers.

'The Keeper,' or Captain, of Hermitage Castle was the deputy of the Keeper of Liddesdale: his payment seems to have been '500 merks, with 5 chalders of victual, the half of it barley, the remainder meal.' He had also 'the mains of Hermitage and the keeping of that Castle intrusted to his charge, where he was bound to lodge prisoners and hold the fortress at all times "patent" to the Sovereign or keeper of the County for the time being.' See Armstrong, *Liddesdale*, p. 11, etc.

Berwick, as it was the most important charge upon the Border, seems to have been liberally provided for.

The pay at Berwick for the whole garrison, officers, and governor is given in the *Border Papers* for the year 1593-4 as £14,420, 8s. 9½d., and in 1590 as £15,005, including payment of the mayor's fee, £10, etc. Again, in 1557 the yearly pay at Berwick is set down as £22,662, 19s. 2d. (p. 8).

'At Berwick for the old and new garrisons, Holy

and Ferne Islands, 10 gunners at Carlisle, 1 master gunner and his mate and 2 others at Wark.'

There was a further addition of £10,914, 4s. 6d. for the 'Christmas quarter, captain and garrison at Tynemouth, and 500 workmen, officers and others left by Sir Richard Lee to remain all winter.'

Much has been said in reproach of Queen Elizabeth for her parsimony, but when one notes the constant drain upon her resources for the upkeep of the Border garrisons, castle and wardens, her subsidies to King James, her assistance to the Netherlanders, the charges of her warfare with Spain, one will reflect that without thrift and constant economies she could never have kept any balance in hand in the Exchequer, exhausted as it had been by the extravagances of her father, Henry VIII.

The governor's pay is said to have been £1500 in the case of Lord Hunsdon, but this would seem to have included the Governor's and Captain of Norham's fees as well, which were separate charges; at least it so appears in the *Book of Complaints* or *Tables of Abuses* presented unto Queen Elizabeth by the Mayor of Berwick in 1592-3, inculpating Lord Hunsdon's government and conduct. (*Calendar of Border Papers.*)

'Abuse 19' commences as follows :—

'While formerly there were (1) a lord governor keeping hospitality in the town, (2) a lord Warden

doing like in the Country, and (3) a captain of Norham entertaining gentlemen's sons, and keeping house there, now these offices are joined in one man's person, an absentee, who spends not one penny of his interteignment and proffytes'—above £1500—'in this place, either by his self or others—the marshal serving the first place—Sir John Selbee the second—and Captain Caree the third.'

The victualler of the garrison seems to have had 20s. per diem.

The marshal's fee was £33, 6s. 8d. per annum, the under-marshal's £16, two tipstaves £5, 6s. 8d. each.

As to the garrison at Berwick, Captain Carey's pay was 4s. per diem, his lieutenant's 2s., his ensign, serjeant, and drum 1s. each, while his men—100—received 8d. per lunar month. Sir William Rede had the like pay and company; Captains Selby, Carvell, Twyfurth, Tomson, Yaxley, Boyer had each 2s. per diem, whilst their companies of 50 men served at 8d. per lunar month.

The horsemen seem to have had 8d. per diem, and there were in addition gunners, artificers in the ordnance, and sundry pensioners—73—who were apparently usually selected by way of favour or reward from the existing garrison.

Pay of the Treasurer (Mr. Robert Bowes) (*Calendar of Border Papers*, vol. i. p. 368):—

His fee was £260, but there were allowances both ordinary and extraordinary, such as house rent, postage money, 'fee upon the works,' allowance for munition, etc., so that in all for 1590 the total comes to £580, 3s. 4d.

The west Warden at *Carlisle*, on the other hand, seems to have received much less than his brother Warden on the east, for Lord Scrope had apparently only £645, 9s. 10d. as his fee, from which, again, 300 marks have to be deducted for the fee of the Captain of the Castle.

This is shown by Lowther's letter to Burghley in 1592. 'I do fynde,' he writes, 'that the wholl fees to the Lorde Scrope for the place amounted unto v j c. XLVLv. IX^{s}. X^{d}. *quad*, all which I take to belonge to the wardenry excepte 300 markes and the grownde, which I know were the distinct fees to the captain of the Castell and the Cyttie. The cittedell is a separate chardge and the same with the fees belonginge are graunted unto Mr. Dalston, who enjoyeth the same. I do not of myselfe knowe, neither can I learne whither the late Lorde Scrope had the chardge of the munition and artillerie here distinctlie for him selfe, or under the Master of the ordenaunces for the Northe.'[1]

[1] The Wardenship of the Western March and Captaincy of Carlisle were separate offices, though occasionally held by the same individual, but

By Queen Elizabeth's Commission in the fifth year of her reign Lord Scrope's fee and wages are thus set down :—

'And further' (in addition to the usual appurtenances, liberties, commodities, advantages, profits, and all other appendages) 'we grant to the said Lord Scroope, for the exercise of the Wardenship aforesaid: so long as in that office he shall remain, the fee and wages of 600 marks by the year for himself, and his 2 deputies aforesaid, that is to say, for either of them by the year £10, and also for the said 2 officers called Warden Serjeants of the West Marches, for either of them yearly 40s. during our pleasure aforesaid: to be paid at the feasts of St. Michael the Archangel and the Annunciation of the Blessed Virgin Mary, by equal portions, out of our treasury, at the receipt of our exchequer at Westminster, by the hands of the treasurer and chamberlain, there for the time being.'

Elsewhere mention is also made of three porters at 26s. 8d. per annum each, of a trumpeter at 16 pence per day, and a surgeon at 12 pence.

The 'usual appurtenances, liberties, commodities, advantages, profits and all other appendages' men-

apparently were conjoined from the time of Queen Mary, for he further writes, 'So as I cannot perceive that the 2 said offices were unyted by graunte and patente untill in the time of Quene Marie.' (*Calendar of Border Papers.*)

tioned above as belonging to the Warden were considerable, comprising tithe corn, fishing rights, various stewardships, receipts from Crown lands and so forth, inasmuch as the Warden was a chief officer and representative of the Crown.

No doubt the Governorship of Berwick—which was, as Queen Elizabeth said, 'the chief jewel in her crown'—and the Wardenship on the East March were more important charges than the corresponding commands on the West, for the former were more directly concerned in any hostilities between the two kingdoms, whereas the latter had chiefly to protect the country against the invasions of the Annandale thieves and the invasions of the Armstrongs and Elliots from the 'swyres' of Liddesdale.

The fees of the Warden of the English Middle March are given in the case of Sir John Forster (appointed 1560), being set down in the *Calendar of Border Papers* under date 1595.

'Grant of the office of Warden of the English Marshes towards Scotland,' viz. 'in partibus de le Myddle Marches ac in dominio Scocie, nenon custodie de le Tynedale at Riddesdale,' 'to Sir John Forster knight by the Queen's letters patent dated 4th Nov., 2nd Eliz. with wages and fees of £300 yearly, also £10 each for two deputies under him in said marches, and 40s. to each of two warden sergeants therein;

all during Her Majesty's pleasure, payable yearly at the feasts of the Annunciation of the Blessed Virgin Mary and St. Michael Archangel by equal portions—in all £324. Also the said Warden's fee for keeping the Castles of Tynedale and Ryddesdale, £26, 13s. 4d. yearly. The fee of the said Sir John Forster as bailiff and receiver of the issues, etc., of the barony of Bywell and lordship of Bulbecke (parcel of the possessions of the late Earl of Westmorland attained) £6, 7s. yearly during pleasure, under the Queen's letters patent of 12th July, 13 Eliz.'

Lord Eure, the Middle March Warden, who succeeded Sir John Forster, writes to the Queen in 1595:—

'As the Warden must strengthen his own people to his great charge, that her highness would increase the fee of £500 formerly granted to Sir Wm. Eure my great grandfather, my grandfather, to the Lord Wharton, and my father, etc., to perfect the services, and grant me "Styford demayne" and other things which Sir John had by her gracious favour to better his estate in service.'

He also craves the parsonage of Simonburn, which his grandfather had, promising to keep a preacher there, and also a house in Hexham to lie in with his men if Sir John Forster's is not available. (*Calendar of Border Papers*, vol. ii. p. 58.)

As for the fees of a Deputy-Warden, we find that Sir John Widdrington, Deputy-Warden of the Middle March in Henry VIII.'s reign, received £133, 6s. 8d., and that the Keeper of Redesdale received £26, 13s. 4d., while for the similar office in Tynedale the fee is given at £30, which seems to have been apportioned as follows :—

The steward, £6, 13s. 8d. The receiver, £6, 13s. 8d.

The bailiff, £13, 6s. 8d. The gaoler, £1, 6s. 8d.

Two serjeants, £1, 6s. 8d., and the woodward, 13s. 4d.

There were other subordinate officials—men of standing in the countryside—who seemed also to have received fees with a view to helping to keep order in the countryside. Thus, within the district of Redesdale, John Hall of Otterburn received £10 in the time of King Henry VIII., his duty being apparently to assist the keeper in maintaining the peace and bringing thieves to justice.

Finally, in Scotland, where, as will be shown in Chapter XIII. Part ii., there were sundry local jurisdictions and baronial rights, the warden-deputes and stewards were sometimes paid by means of teinds (tithes) and other such charges.

Thus in the Appendix, No. 2, of *Leges Marchiarum* we read of the following grants or maintenances :—

'The Laird of Howmaines, the Stewart Depute, and therefore to have the Teynds of Smalholme yearly, and the Laird of Newbie to the [be?] Warden Depute, and therefore to have 50 m. given him yearlie of Drumdanane, as their tacks specifies at this present. Therefore they to be called the Deputes with the assistance of other famous and wise gentlemen of the Countree of Annandale, as is needful.'

Also, of the maintenance of the Keeper of the House of Howdam:—

'This man to have ane rental given him of the hail lands of Annandale, belonging to the Lord Maxwell, and the house of Terregles, and to be Chamberlain to their hail lands, and to uplift their hail dutys: and that all men dwelling on the said lands serve with him at all times, when they shall be charged.'

CHAPTER XII

THE ORIGINAL OFFICE OF THE LORD WARDENS

'Lord Buckcleugh into the Scots Border
Was high Lord Warden, to keep them in good order;
On that border was the Armstrangs able men,
Somewhat unruly, and very ill to tame.'

SCOT OF SATCHELLS,
History of the Name of Scot.

The Office of Guardian or Warden

GUARDIAN is, of course, the same word as Warden, *Gardianus* in the Latin becoming Warden in English. Yet *Custos* seems to have been an earlier term than *Gardianus*, in regard to the marches, where, as Dr. Hodgkin pointed out in his Creightonian Lecture, 'The Wardens of the Northern Marches,' the duty was at first a military one, the Warden being the *locum tenens* of the King. *Custos* implies the safe keeping of some object or other committed to your charge, but as in that age safe keeping involved fighting, *Gardianus*—a term more suggestive of warfare—came to be the name of the King's representative on the marches.

Thus in its first signification the Wardenship of the Marches meant the warding or keeping of

Scotland, which Edward I.—regarding that kingdom as his own—had determined wholly to subject beneath him; but after the year 1328, when Scottish independence was definitely recognised, the Wardenship came to mean these three things—the warding of the Border country, whether by defence or offence, the keeping of the Border Laws, and the punishment of malefactors.

They held their power *per baroniam*, and against them the King's writ did not run, whilst in their administration of justice they were subject only to their King.

Concerning the later duty of the Lord Warden, Edward Aglionby, in a letter giving Burghley information about the 'Severall charge of the West Borders of England and Scotland' in 1592 (*Calendar of Border Papers*), writes as follows:—

'The Warden hath charge as generall, in all affaires under her Majestie for the lawes of Marches, according to the ancient Border lawe, and severall newe treatisse. His deputie is one of the Wardens owne appointinge, who hath in charge all particular service, either for defence of England, or offence of Scotland.

'In defence of England, as when any sodden rode, or secreat thift made by any Scottes or Englishe borderers, to be readie upon the first shout or fray, with a score at the least of the Wardens men, to

followe to where the fray is, or to ride betwixt them and home, as the service requires. In offence of Scotland—when the Warden doth make any rode, to go with a compotent number and take a boutie in Scotland; and that is called a Warden rode.'

Later again their duties came to include political functions, for they had frequently—when war was toward, or fear arose of foreign influences prevailing in Scotland—to do a considerable amount of secret service work, and make reports to the Foreign Office of the day, viz. to the Secretary of State, or the King's favourite minister. One even hears of a Warden rifling the despatch bag of the French agent on his way to Edinburgh.[1] Thus in Elizabeth's reign Robert Bowes was not only Treasurer of Berwick but Ambassador for the Queen at Edinburgh during great part of seventeen years. 'The three Border wardens,' wrote the late Mr. Joseph Bain, the able editor of the *Border Papers* (vol. i. Introduction), 'in addition to their proper duties, were also charged with secret and confidential enquiries, so far as their ability extended, into the internal

[1] When Henry VIII. sent Sir Ralph Sadler in 1540 to the Court of Scotland, he supplied him with a letter of Cardinal Beaton to his agent in Rome, which King Henry pretended had been left accidentally by the Cardinal's servant in the north of England, after he had been driven ashore in a tempest. In reality, the packet had been taken by force from Brunston, the Cardinal's agent, by John Horsley, Captain of Bamburgh.

affairs of Scotland, as well as the intercourse of its rulers with the Continent, especially with France and Spain; and the long reports on these subjects, which they from time to time forwarded to the Secretaries of State, are abundant evidences of the efficient manner in which they discharged these onerous duties. They were compelled, in truth, to be not less familiar with the pen than the sword.'

CHAPTER XIII

PART I

THE LORD WARDENS OF THE MARCHES

'Wel sayd the erle when I was sworne Warden of the Marches, you yourself told me, that I might with my staffe arrest all men under the degree of a Kynge, and now I am more stronger, for I have a commision so to do which you have sene.'

The Earl of Northumberland's reply to Wolsey when he arrested him for high treason.—Hall, *Triumphant Reigne of Kyng Henry the VIII.*

The first institution, then, of the office of Warden appears to belong to the reign of Edward I., and the original duty of guarding or keeping those parts of Scotland upon which he had already laid his hands was probably first exercised by Walter de Huntercombe.

Thus Walter de Huntercombe of Huntercombe, Oxon, was made Governor of Edinburgh Castle, 1296-98, and of the Sheriffdoms of Lothian, viz. Edinburgh, Linlithgow, and Haddington, also *Warden of the Marches towards Northumberland.*

He had early seen service on the Welsh Marches, being summoned to the first expedition against Lewelin, Prince of Wales, and in the Scottish wars

again he was summoned to attend the muster at Norham in 1291, and at Carlisle, York and Berwick, 1299-1310. Also, we find in 1299 Gilbert de Umfreville made a Commissioner for manning and fortifying the castles and strongholds of Scotland, and for appointing Wardens of the Marches.

Again, John St. John of Halnaker, that well-known commander, was appointed by Edward his Lieutenant in the Counties of Cumberland, Westmoreland, Lancaster, Annandale, and all the Marches unto the boundaries of the County of Roxburgh in 1300, and in 1301 was made Warden of Galloway.

John, Earl of Warenne, was Guardian (Warden) and Lieutenant of Scotland in 1296-97, 'custodem nostrum totius regni et terrae Scotiae,' and further, Edward I. appoints Henry de Percy 'custodem nostrum totius terrae Galwediae ac comitatus nostri de Air' (Ayrshire), and after Edward's death in 1307 the Earl of Pembroke was appointed to the Wardenship.

'The first Lord Warden of the marches,' write Burn and Nicholson in their *History of Westmorland and Cumberland*, 'of whom we have had any authentic account, was Robert de Clifford, Lord of Westmorland, and hereditary sheriff of the same: of whom the Countess of Pembroke's *Memoirs* take notice, that in the twenty-fifth year of King Edward

the First, viz., 1296, the said Robert, being then about twenty-three years of age, was made the King's captain and keeper of the marches in the North towards Scotland.' If the words 'keeper of the marches in the North towards Scotland' be taken to mean the English Marches, then Clifford may be reported the 'first Lord Warden,' but if Scotland is included in the term, Walter de Huntercombe might dispute the title.

Clifford's office was probably entirely military, for on 12th July 1297 he was appointed Captain of the Cumberland fortresses, and ordered to invade Scotland with Henry de Percy, and a little later in the same year was made Captain and Guardian of the Scots Marches and the County of Cumberland.

He was again Warden of the Scots Marches in Edward II.'s reign, being in 1308 appointed Captain and Chief Guardian of all Scotland on either side of the Firths, in company with Robert Umfreville, the Earl of Angus.

On this Western March the Bishop of Carlisle was frequently joint Warden with other principal Western Borderers, and in 1302 the bishop was Governor of Carlisle Castle. In 1341, £200 was ordered to be paid the bishop, in part on the arrears of £529, 4s. for the wages of him and the men abiding with him for the safe keeping of the marches against Scotland.

Again, in 1309 the Bishop of Carlisle and Thomas de Lucy were jointly and severally constituted Wardens of the Western Marches.

The following is a table of the various Lord Wardens General of the Border, and also the Lord Wardens of the East, Middle, and Western Marches, both English and Scottish, so far as the writer has been able to discover them. He cannot, however, venture to hope that it is complete.[1] One difficulty is that the Deputy-Wardens are frequently styled Wardens; sometimes in old writers the Captains and Marshals of Berwick-upon-Tweed are so alluded to, and very frequently—especially on the Scottish side, and on their Western March particularly—the Wardens are changed with bewildering suddenness. This was the consequence of clan feuds in part; also because of English pressure or of English trafficking with the insurgent Scots Lords.

[1] William Selby, writing to Burghley in 1598 (*Calendar of Border Papers*), gives the names of a number of recent Wardens on the East March, concerning one or two of whom one knows nothing.

'Sir Wm. Ewrie, great-grandfather to this Lord Ewrie, and Lord Warden of the East March; Sir Nicholas Stirling was next Warden, then Lord Ewrie, this Lord's Father, next Lord Conyers, and then Lord Whartoun, in which Lord's time the 2 yeares warres began: during which the Earl of Northumberland was Lord Warden, and afterwards Lord Gray.'

THE LORD WARDENS OF THE SCOTTISH MARCHES

West	Middle	East
1314		
Sir James Douglas ('The Good' or 'Black Douglas').		
	1343	
	Sir William Douglas (Knight of Liddesdale, 'the Flower of Chivalry').	
In 1364 and from 1368 to his death in 1400		
		1356
Sir Archibald Douglas 'the Grim' (Earl of Douglas in 1385—said to have codified the Laws of the Marches)	. . . . .	William, 1st Earl of Douglas, joint Warden with the Earl of March.
		and of East March.
In 1400		
Archibald ('The Tynem	an'), 4th Earl of Douglas,	Lord Warden General ap-
parently, and of East M	arch.	
James 'the Gross,' 7th Earl, who died in 1443, sometime Warden.		
	1433	
	William Douglas, 2nd Earl of Angus.	
		1449
		Sir Alexander Home.
		George, Earl of Angus.
In 1450		
William, 8th Earl of Doug	las, Lord Warden of all the	Marches, killed by James
II. in Stirling Castle in	1452.	
James, 9th Earl, succeeded his brother, but was forfeited in 1455, after which the Wardenship was no longer hereditary with the Douglas family.		
In 1456		
Sir Andrew Stewart, Laird of Avondale.		

THE LORD WARDENS OF THE ENGLISH MARCHES

West	Middle	East
1297		
Robert de Clifford, 'Keeper of the Marches in the north towards Scotland.'		
In 1327		
Earl of Surrey, Lord Warden General.		
1328		
Henry, 2nd Baron Percy,	Lord Warden General	
1334		
Ralph, 4th Lord Neville, and Lord Percy, Joint Wardens General.		
1352, etc.		
Henry, 3rd Lord Percy, acted as Lord Warden General.		
1368		
Henry, 4th Lord Percy and	1st Earl of Northumberland, Warden General.	
		In 1368
		Ralph, 5th Lord Neville on commission for custody of East March, later sole Warden, died 1388.
1377		
Roger de Clifford.		
1380-1388		**1384**
Ralph, 5th Lord Neville, joint Warden of East and West Marches.		Hotspur, associated with his father, and Warden of East and West Marches.
1386		
Thos. de Clifford, and Ralph, 6th Lord Neville and 1st Earl of Westmoreland (he was sole Warden after Hotspur's death in 1403).		

THE LORD WARDENS OF THE SCOTTISH MARCHES—(*continued*)

West	Middle	East
	1464 William Douglas of Cluny.	
In 1468 The Earl William Douglas at Lincluden renews and promulgates the Laws of March previously drawn up by 'Archibald the Grim'		
In 1475 Alexander, Duke of Albany.	1479 James, Earl of Buchan.	1475 Alexander, Lord Home. 1481 Archibald, 5th Earl of Angus ('Bell-the-cat'). Alexander Hume of that ilk.
1489-1503 Patrick Hepburn, Earl of Bothwell.	1502 Walter Ker of Cesford. 1503 Ralph and Andrew Ker.	1499 Patrick Hepburn, Earl of Bothwell.
1510 Alexander, 3rd Lord Home, Lord Warden General, commanded with Huntly the van at Flodden.		
1514 Earl of Bothwell, Lord Warden General of all the Marches.		
	1514 Sir Robert Ker. 1515 Sir Andrew Ker of Cesford.	
1516 Anthony Darcy, Lord Warden General of all the Marches, slain in 1517 by Home of Wedderburn.		
1522 Lord Maxwell.		

THE LORD WARDENS OF THE ENGLISH MARCHES—(*continued*)

West	Middle	East
		1389 The Earl Marshal.
		1403 John, afterwards Duke of Bedford.
1412 Edward, Duke of York.		
		1417 Henry, 2nd Earl of Northumberland.
1420 Richard, Earl of Salisbury.		
		1434 Earl of Salisbury.
		1435 Earl of Northumberland reinstated.
1439 Henry, 3rd Earl of North	umberland, Lord Warden	General.
		1439 Henry, 3rd Earl of Northumberland.
1453 Warwick 'the King-maker,' associated with his father, the Earl of Salisbury.		
		1461 John Neville, Lord Montagu.
1482 Richard, Duke of Gloucest	er, Lord Warden General.	
	1485 Henry Percy, 4th Earl of	Northumberland, Warden
1495 Henry, Duke of York, Lor	of Middle and East. d Warden General.	
		1503 Henry Percy, 5th Earl of Northumberland.
1509-1525 Thomas, Lord Dacre.		

THE LORD WARDENS OF THE SCOTTISH MARCHES—(*continued*)

West	Middle	East
	1525 Archibald Douglas, 6th Middle and East Marches (m. Margaret Tudor Queen Dowager).	Earl of Angus, Warden of
1545 Robert, Master of Maxwell.		
1550 Lord Maxwell (see Dacre).	1550 Sir Walter Scott of Buccleugh.	Alexander, 5th Lord Home.
1552 Sir John Maxwell.		
1553 Sir James Douglas.		
1558 Earl of Bothwell.	1558 James, Earl of Bothwell, and Lieutenant of the Marches of Scotland.	
	1560 Sir Walter Ker of Cessford.	
1561 Sir John Maxwell.		
1573 The Lord Maxwell, reappointed Warden.		1573 Sir James Home of Cowdenknowes.
1574 Earl of Angus, and Lieut.-	General over all the	Borders.
1582 The Laird of Johnstone, and in 1584 appointed Lieutenant of West Marches, Nithsdale, Galloway and Liddesdale, and Provost of Dumfries.	1583 W. Ker (also Keeper of Liddesdale). 1584 Sir Thos. Ker of Fernihurst (also Keeper of Liddesdale).	1582-1589 Alexander, 6th Lord and 1st Earl of Home, and in 1603 Lord Warden General.
1584 Earl of Arran was Lord	Warden General of all the	Marches.

THE LORD WARDENS OF THE ENGLISH MARCHES—(*continued*)

West	Middle	East
In 1523		
Henry Percy, 5th Earl, Lord Warden General, superseded by the Earl of Surrey		
1525		
Henry de Clifford (15th Baron, son of the 'Shepherd Lord'), 1st Earl of Cumberland.		
1527		
Henry Percy, 6th Earl, Lord Warden General.		
1528		
Wm., Lord Dacre.	**1536**	
	Sir Thos. Percy.	Sir Wm. Eurie, 1st Lord.
		Sir N. Stirley.
	1540	
	Sir R. Bowes,[1] and of	East.
1542		
Lord Scrope.	**1545**	**1545**
	Sir Ralph Eure (Lord Ewrie).[3]	Lord Eure.
1547		
Lord Wharton.[2]		

[1] *Sir Robert Bowes* ('one of the most expert Borderers') was Warden of East and Middle Marches, and drew up his 'Book of the State of the Frontiers and Marches betwixt England and Scotland,' and his treatise on the 'Forme and Order of a Day of Truce': he seems to have continued Warden till his death in 1554.

[2] *Sir Thomas Wharton* (*1st Lord Wharton*), held to be another of 'the most expert Borderers,' was one of the most energetic of all the Wardens; he was originally Deputy under Lord Scrope, Captain of Carlisle Castle, victorious at Solway Moss fight, Warden of West March, then in 1553 Deputy-Warden General of all the Marches under the Duke of Northumberland, when he took order for the day and night watches to be kept from sea to sea; finally appointed to the East and Middle Wardenries till his death in 1568. He was buried in Kirkby Stephen Church, where his tomb still remains in good preservation.

[3] *Sir Ralph Ewrie* (*Eure*), or Lord Ewrie, of the ballads.

'Lord Ewrie was as brave a man
As ever stood in his degree;
The king has sent him a broad letter,
All for his courage and loyalty.'

He was, as Sir Walter Scott says in the *Border Minstrelsy*, 'one of the bravest men of a military race. He was son of the first, and father of the second Lord Ewrie; and was himself created a Lord of Parliament during his father's lifetime, in the 35th year of Henry VIII.' He was slain in the Battle of Ancrum Moor, 1546, and buried in Melrose Abbey, where 'his stone coffin,' continues Sir Walter Scott, 'may still be seen—a little to the left of the great altar.'

He was Warden of the Middle March at the same time that his father was Warden of the East March.

THE LORD WARDENS OF THE SCOTTISH MARCHES—(*continued*)

West	Middle	East
	1585 W. Ker of Cessford (Provost of Jedburgh and Keeper of Jed forest), his son, Sir Robert Ker (afterwards 1st Earl of Roxburgh) associated with him.	
In 1587 W. Maxwell, Lord Herries.		
1588 Sir John Carmichael (he had been Keeper of Liddesdale and acted as Warden at the Raid of the Reidswire in 1575).		
1590 Lord Maxwell was Warden.		
In 1592 Earl of Angus. John, Lord Maxwell, slain at Dryfe sands by Johnstones in 1593.	1592 Duke of Lennox.	
1595 Laird of Johnstone.		
1598 Sir John Carmichael again: slain by the Armstrongs in 1600 on his way to hold a Warden's Court at Lochmaban, and succeeded in his office in 1600 by the Laird of Johnstone.		1598-1601 Lord Willoughby d'Eresby. 1601 Sir John Cary (2nd son of Lord Hunsdon) (previously Marshal of Berwick and Deputy Warden).
1603 Alexander, 6th Baron and	1st Earl of Home, Lord	Warden General of the
three marches of Scotla	nd.	

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THE LORD WARDENS OF THE ENGLISH MARCHES—(*continued*)

West	Middle	East
1549-1553 Wm., Lord Dacre.	1549 Earl of Rutland, Warden,	and of East.
1550 Henry, Lord Dorset, Lord	Warden General.	
	1553 Lord Eure.	1553 Lord Grey of Wilton.
	1557 Sir Thos. Percy, 7th Earl,	also of the East.
1551 Dudley, Duke of Northum Lord Warden General),	berland, Lord Warden Ge then Warden of Middle	neral' (Wharton, Deputy and East Marches.
	1559 Sir Ralph Sadler, also of	the East.
	1560 Sir John Forster.	
1562-1592 Henry, Lord Scrope, 9th Baron Bolton, Governor of Carlisle, received Mary Queen of Scots and was her guardian at Bolton.		1568-1596 Henry, Lord Hunsdon, 1st cousin to Queen Elizabeth, Lord Chamberlain, Governor of Berwick. In 1589 was made Lord Warden General and Keeper of Tynedale.
1592 Sir R. Lowther.	1595 Ralph, Lord Eure.[1]	
1597 Thos., Lord Scrope, from whose safe keeping in Carlisle Castle 'Kinmont Will' was taken.	1598 Sir Robert Cary, 7th and youngest son of Lord Hunsdon, and afterwards 1st Earl of Monmouth, brought the news of Queen Elizabeth's death to James.	
1603 The Earl of Cumberland, Lieut.-General of Cum town and county of Ne	Warden of the West and berland, Westmoreland, wcastle.	Middle Marches and also Northumberland and

[1] Ralph (3rd Lord Eure, Ewry or Evers), succeeded Sir John Forster, but apparently did no better, and, complaints being laid against him, soon resigned. From various letters it appears that his father, grandfather, and great-grandfather, Sir W. Eure (1st Lord Eure), had all been Wardens of East or Middle Marches.

Between 1585 and 1595 there are no fewer than six changes in the Wardenship of the Western March of Scotland. (See p. 193.)

Finally, in the case of certain Wardens representing various powerful clans, or as being themselves conspicuous for courage, daring or notoriety of any kind, notes have been appended giving further particulars of their lives or families.

The Cliffords and the early Wardens of the English Western March

1297. *Robert de Clifford, Lord and Hereditary Sheriff of Westmoreland.* He succeeded to the estates of his grandfather Roger, and also to the moiety of the great Veteripont or Vipont inheritance through his mother Isabella. He was the founder of the north country branch of the Clifford family; one of Edward I.'s most able soldiers and administrators, he took Carlaverock Castle, and was made Captain of the Scots Marches and the County of Cumberland.

In 1308. Also he was appointed Captain and Chief Guardian of all Scotland on either side of the Firths, in company with the Earl of Angus, and met his death on the field of Bannockburn. It is interesting to note that as Robert de Clifford was the first Warden on the West March, so the last

Warden of the same March was his descendant, 'George the Magnificant,' the last Earl of Cumberland, who was appointed Warden of the Middle and West Marches by James VI. and I. shortly after his succession to the English crown.

1315. Andrew de Harcla, Warden, and later Governor and Earl of Carlisle.

1334. Henry de Percy and Ralph de Nevil were jointly and severally commissioned to execute the office of Head Wardens of the Marches in the Counties of Northumberland, Cumberland, and Westmoreland.

1336. Gilbert Welton, Bishop of Carlisle, and Thos. Lucy, Lord of Cockermouth, Wardens.

1370. Thos. Appleby, Bishop of Carlisle, Roger de Clifford, Anthony de Lucy, and Ranulph de Dacre were commissioned to the Wardenship.

1374. Bishop Appleby, Roger de Clifford, Thos. de Musgrave, Alan de Heton and nine others.

1377. Thos., Bishop of Durham, Thos., Bishop of Carlisle, Edmund Mortimer, Earl of March, Roger de Clifford, Ralph de Dacre, Richard de Stafford, Henry de Scrope, Thos. de Musgrave, and John de Appleby, Dean of St. Paul's.

1384. Henry Percy, Earl of Northumberland, was Warden.

1388. (Froissart states that 'the Lord Neville,

who had commanded the defence of the frontier of Northumberland for five years against the Scots, was dismissed: for this service he had been paid by the Counties of Northumberland and Durham the sum of 16,000 francs annually.

'Sir Henry Percy, being appointed in his stead to the command with a salary of 11,000 francs annually, was a circumstance which created much animosity and hatred between the Percies and Nevilles, who were neighbours, and had been friends.')

In this year you have a Warden's fight, viz. the Battle of Otterburn, for the English Warden was Hotspur, while the Earl of Douglas was the son of the former Scots Warden. 'Hotspur,' the most renowned of all the Percies[1]—idolised by the people and immortalised by Shakespeare—may justly be regarded as the hero of Northumberland, for he showed throughout his short life that passionate love of adventure (the 'plucking of bright honour from the pale-faced moon'), that disdain of fear, and that disregard of consequences which one regards as typically Northumbrian. The 'speaking thick, which Nature made his blemish,' alludes no doubt to the Northumbrian burr, which tradition asserts Hotspur

[1] For an account of the potent Percy family—the most powerful Barons in the North of England, and for some centuries Wardens, and Lord Wardens General of the Marches—the reader is referred to *A History of the House of Percy*. Brenan. (Freemantle.)

to have originated and his admirers to have copied. His opponent at the Battle of Otterburn in 1388 was of course that 'sprightly Scot of Scots, Douglas, that runs o' horseback up a hill perpendicular,' and in that famous fight the typical Scot met with the typical Northumbrian. Douglas indeed was the elder by some years, and, emulous of the younger's reputation, successfully challenged Percy at the barriers before Newcastle, and defeated his forces at Otterburn, as everybody knows. One might perhaps liken the Scot to the elder brother of the Parable, and the Northumbrian to the Prodigal, and you can add a touch of superstition in Douglas which Hotspur would certainly have scorned:

> 'But I have dream'd a dreamy dream:
> Beyond the Isle of Sky,
> I saw a dead man win a fight,
> And I think that man was I.'

The Nevilles

This family, renowned in battle and even more renowned in matrimony, was for many years, like the Percy with which they intermarried, engaged in guarding the Border.

Thus in 1334 Ralph, fourth Lord Neville, brother of the 'Peacock of the North,' was joint Warden with Percy. He was one of the victors in the Battle

of Neville's Cross, and was buried in Durham Cathedral.

His son John, fifth Lord Neville, was in 1368 on the Warden's commission for East March, then Governor of Bamborough, also joint Warden for East and West Marches, and finally sole Warden of West March.

His son Ralph, sixth Lord Neville and first Earl of Westmoreland, was joint Warden of West March with Lord Clifford's eldest son, and later was again appointed Warden, his eldest son being associated with him. He was twice married, and had in all twenty-three children: his second wife was Joan Beaufort, daughter of John of Gaunt, and his eldest son by her was the Earl of Salisbury, father of 'the King-maker,' in whom the power of the house reached its climax.

The sixth Earl of Westmoreland, by joining in the 'Rising of the North,' ruined the fortunes of the elder branch of the Neville family, for, being forfeited, he lost the estates of Brancepeth and Raby.

The Race of Douglas

'So many, so good, as of the Douglases have been,
Of one sirname in Scotland never yet were seen.'

For a period of nearly two hundred years, only terminating in 1452, when James II. despatched

William, the eighth Earl, in Stirling Castle with his own hand, the history of Scotland is intimately bound up with the doings of the House of Douglas.

The Wardenship of the Marches seems to have become, like the Sheriffwick of Teviotdale, an appanage of their family; but with the murder of the eighth Earl, and the forfeiture of James, ninth Earl, the glory of the elder branch departed. Then the younger branch, the 'Red Douglas,' put down 'the Black,' as the saying ran; for James, having been forfeited, died a monk in Lindores Abbey, and George Douglas, fourth Earl of Angus, received the ancient Lordship of Douglas, and his son, Archibald 'Bell the Cat,' grew to be as powerful as his predecessors of the elder stock.

The Dacres

'Among the great families of Cumberland,' writes Mr. R. S. Ferguson in his county history,[1] 'the martial house of Dacre stands out the most prominent. So far back as ever they can be traced they are αὐτόχθονες, De Dacres of Dacre. The first that is known is William de Dacre of Dacre, Sheriff of Cumberland in 20, Henry III.,[2] and great-grandfather of the daring and lucky young wooer who carried off the young "Lady of Gilsland."

[1] *History of Cumberland.* (E. Stock.) [2] Viz. 1173.

'The Dacres,

"So daring in love, and so dauntless in war,"

are ever inseparably connected in history and legend with memories of Flodden, of Border warfare and Border raids, while their wild slogan of "a Daker, a Daker, a read Bull, a read Bull," was ever a terror to the Scots, as their banner of martial red with its silver escallops was ever a rallying-point for the English bordermen.'

Of this family, three appear in the Wardens' roll. Humphrey, 'Lord Dacre of the North,' was Warden of the West March in second of Richard III., but it was Thomas, Lord Dacre, who won the greatest fame as soldier and as raiding Warden. He commanded the reserve at Flodden, and he was Warden from 1509 to 1525, when he died.

A 'malleus Scotorum,' he thus writes in 1514 to the Lords of the Council, '*There was never so mekill myschefe, robbry, spoiling and vengeance in Scotland then there is nowe, without hope of remedye; which I praye our Lord God to continewe.*'

He built Askerton Castle and Drumburgh to stay the Scots incursions and strengthened Naworth.

His eldest son William, Lord Dacre, was frequently Governor of Carlisle, and also Warden.

His grandson dying quite young, this northern barony died out, and Naworth with its broad acres

passed to the children of Lord William Howard ('Bauld Willie'), who married Elizabeth Dacre ('Bessie wi' the braid apron').

The Kers

This powerful clan attained to prominence in the sixteenth century, and the Wardenship of the Scots Middle March was throughout that time almost continually in the hands either of a Ker of Ferniehirst or a Ker of Cesford.

They were much favoured by James VI. and I., Sir Robert Ker (Sir Robert Carey's enemy and friend—see *Carey's Memoirs*) being created first Earl of Roxburgh, and his cousin, the notorious Robert Carr (of Ferniehirst), being made Earl of Somerset. The Earl of Ancrum, the Earl of Lothian, and Lord Jedburgh also were derived from the same twin stock.

In 1514 Sir Robert Ker of Caverton was Warden of the Scots Middle March, and was slain at a Border meeting by the bastard Heron and two other Englishmen. His son, Sir Andrew Ker of Cesford, was likewise Warden; Sir Andrew's son again, William, was also Warden, and with him again was associated as deputy Sir Robert Ker, his son, later first Earl of Roxburgh.

In 1584 Sir Thomas Ker of Ferniehirst had superseded William Ker of Cesford as Keeper of Liddesdale

and Warden of Middle March and Provost of Jedburgh, but after the murder of Lord Francis Russell at the day of truce, held by Ferniehirst on Windy Gyle, Cesford was reappointed Warden.

Ferniehirst is said to have been able to bring 3000 men into the field, and as a great partisan of Queen Mary was much dreaded by the English, and a thorn in the flesh to Sir John Forster, his opposite Warden.

Their family burial-place was the north transept of Jedburgh Abbey, where several headstones commemorate the Wardenships of departed Kers, as, for example, that of Andrew Ker, who was Warden of the Middle March, was knighted and died in 1545[1]; that of Sir John Ker, who followed his father's example, and died in 1562,[1] and that again of his son, Sir Thomas Ker, opposite Warden, and torment, to Sir John Forster, the English Warden, as above mentioned.

The Maxwell and Johnstone Clans

In the sixteenth century the West Wardenry of Scotland came to be almost exclusively associated with the Maxwell name, but on two occasions it was given to the rival, but less numerous, clan of Johnstone.

Thus in 1585 the Lord Maxwell was dismissed from

[1] The headstones bear the dates 1524 and 1559. Our ancestors were remarkably careless as to dates, as is well known.

the Wardenship of the West March of Scotland, and the Laird Johnstone was put in his place and commissioned to apprehend him.

Subsequently, Johnstone was defeated and taken prisoner, and shortly after Maxwell was reinstated as Warden, but in the fight at Dryfe Sands Maxwell was slain by the Johnstones.

Finally, in 1608 Maxwell's son and heir assassinated Sir James Johnstone, but James I. succeeded in apprehending the assassin, and caused him to be publicly beheaded in Edinburgh in 1613.

The Scotts of Buccleugh

Sir Walter Scott of Buccleugh and Branxholme fought at Flodden at an early age, was one of the victors at Ancrum Moor battle, and became Warden of the Middle March in 1550, but in consequence of the 'deadly feud' between Scott and Ker he was murdered in Edinburgh in 1552.

His grandson was the intrepid Sir Walter Scott, the Laird of Buccleugh and first Baron Scott, who performed 'the last great Border exploit' by breaking into Carlisle Castle in despite of Lord Scrope and carrying off 'Kinmont Will.' He was married to Margaret, sister of Sir Robert Ker (later first Earl of Roxburgh), and with him was styled the 'firebrand of the border.'

In 1591 he was appointed Keeper of Liddesdale, and seems to have been allowed the higher rank of Warden, and to have treated with the opposite Wardens on an equal footing. Scot of Satchells writes of him as Warden :—

> 'Lord Buckleugh into the Scots Border
> Was high Lord Warden to keep them in good order';

but he does not appear to have had a commission for the Western March.

In 1604 he went over into the Low Countries with a company of two hundred men, was created a Baron in 1606, and died in 1611.

The Family of Home

The first of this well-known family—so long and intimately connected with the Wardenship of the East March — to be appointed Warden was Sir Alexander Home of Home in 1449, and in that same year he was selected as one of the guarantors of a treaty with England.

His eldest son again, also Sir Alexander, was Warden, and was created Lord Home in 1473.

This man's grandson, second Lord Home, was appointed Warden of the East March in 1488 for seven years.

The son, third Lord Home, was Lord High Chamberlain and virtual Prime Minister in the reign of

James IV., and thrust James on in his quarrel with England: he was Warden General of the three Marches. At Flodden he commanded the van with Huntley, and together they routed the wing of the English; and then, Border fashion, they turned to pillage,[1] whilst their King was slain, so the tradition runs.

In 1516 he and his brother were executed for treason, and their brother George, fourth Lord Home, does not appear to have been Warden, yet he died in a Border fight, and his son Alexander, fifth Lord, was appointed Warden of the East March and ordered to keep Hume Castle, on account of its proximity to the Borders, as a place of war.

His son Alexander, sixth Lord Home and first Earl of Home, became Warden of the East March in 1582, and took a prominent part against Bothwell.

In 1599 he went abroad, resigning the Wardenship; and in 1603, accompanying James VI. into England, was made lieutenant and justiciary over the three Marches.

[1] See 'The Souters o' Selkirk.'

'And up wi' the lads o' the Forest,
That ne'er to the Southron wad yield!
But Deil scoup o' Home and his menie
That stude sae abiegh on the field.'

PART II

'The King he wrytes a luving letter,
With his ain hand sae tenderly,
And he hath sent it to Johnnie Armstrong
To cum and speik with him speedily.'

'Ballad of Johnnie Armstrong.
Border Minstrelsy.

THE LORD WARDENS GENERAL, LIEUTENANTS AND SCOTS JUSTICIARS

The Lord Wardens General seem to have been chiefly appointed for the purpose of taking military charge of the whole frontier in case of war, and in this respect probably had the same powers as the Royal Lieutenants, who were specially appointed to represent the King: in either case they would have a special commission, and appear to be indifferently styled *Locum tenens* or *Custos generalis*.

When Edward IV. in 1480 gave his commission of lieutenancy to the Duke of Gloucester, he granted him full authority to summon 'omnes et singulos ligeos et subditos nostros tam in merchiis nostris versus Scociam quam in comitatibus eisdem merchiis adjacentibus.'

Again, in 1497, when the Scots invaded England and the King had appointed the Earl of Surrey his lieutenant in the north, Bishop Fox in the Palatinate requested help from him. Surrey thereon came to Durham, and raised a large number of men in that

county and in Yorkshire, by virtue of a like commission.

Again, in 1522 the King appointed the Earl of Shrewsbury his 'Lieut. Gen. of all the north parties for agenst Scotland,' 'forasmoche,' runs the commission in Rymer's *Foedera*, 'as the Kingis Highnes our Sovereigne Lord hath sure & certeyn knowledge that his auncient enemyes the Scotts, by the procuring & Instigation of his notorious & cruell enemy the Frenche Kinge, in the begginning of the next monyth of September as before, entende to Invade this his Roialme of Englande, & not only to sley, spoil & robb his subjects & People of the north Parties & Merches near adjoynaunte unto the same Scottes etc.'

Occasionally no doubt the office was conferred upon a court favourite or scion of the Royal House, and may have been a sinecure.

Thus, when Henry, Duke of York, was appointed in 1495 titular Custos Generalis of the three Marches, Thomas, Earl of Surrey, as 'subcustos et viceguardianos' performed the duties. In 1482, when Richard, Duke of Gloucester, was appointed Lord Warden General by Edward IV. as his *locum tenens*, war was expected with Scotland, and the appointment was evidently a military one.

The great nobles of the north as the years went on were less and less often appointed Lord Wardens

General, partly perhaps owing to the increase of the power of the Crown, partly to the exceeding responsibility of the office.

When the Earl of Northumberland in Henry VII.'s reign 'indented for the 3 Marches and keeping of the Town of Berwick upon Tweed in time of war,' Bishop Fox of Winchester held it was too expensive a charge for one man's power when active war was expected.

Having had experience of 'Keeping the Borders' when as Bishop of Durham he defended Norham Castle in person against the Scots in 1497, he thus writes and advises Cardinal Wolsey:—

'I doubt not, my Lord, it shall be right necessary that the Kynges Grace make a Warden for the Est and mydle marches, for it shall be to muche for any oon persone to bere the burdeyn of all 3 marches in the tyme of werre; and it shal be right expedient that he be a very hable man that shal be wardeyn of the said Este and myddle marches in the tyme of werre; for uppon the Este marche shal be the moste busynesse of the werre; savyng that if my Lord Dacre would leve his sone and his brother uppon the waste marches, wherby the Scottes have not muche with a great army invaded those partes, and lodge hym self in the Este marche, in myne opinyon, for the great experyence, acquayntance and landes which he hath in Northumberland, he shuld be right meit

to kepe the said Este and mydle marches; and whoo soo ever shalbe now Warden of them, he ought not to looke to have the fees that the said Erle of Northumberland had; seying that he had the said fees, as above is said, not only for the keping of the said Este and mydle marches, but also for the keping of the said towne of Berwick, which towne is nowe in the Kinges hands and at his proper costes and chargies: and in my pouer opynyon the fees that the said Warden shall have owght, of reason, to be cessed much after the nowmbre of the souldyers which he will bynde hym to have contynually attendante and servinge in the werre uppon the said Borders.'[1]

In furtherance of the Tudor plan of centralisation and consolidation of the royal authority, Henry VIII. initiated the Council of the North, and appointed in 1522 a commission and a royal lieutenant to govern the north of England, whereby the power of the Wardens was more directly controlled by the court. 'This plan of government,' as Dr. Lapsley says in his *County Palatine of Durham*, 'by a lieutenant and council continued until 1525, when a slight modification was made. This consisted in placing the north under the nominal control of the king's natural son, Henry FitzRoy, whose council carried on the actual work of administration. Henry was created Duke

[1] *Original Letters* (Ellis), CXIV. vol. i. 3rd series.

of Richmond and appointed the King's Lieutenant General North of Trent.'

The Duke remained in the north until 1532, and during that period his council governed the northern counties. After Richmond's departure his council, known now as the 'Council of the Marches,' continued to administer the north in co-operation with the Duke of Northumberland, Lord Warden of the Marches, until the outbreak of the Pilgrimage of Grace in the autumn of 1536.

In Scotland it appears that the Lord Wardens were not granted such full judicial powers in their various Wardenries as the English Wardens were wont to exercise. 'March Treason,' in the technical sense of offences against the Warden's enactment, as has already been shown in Chapter VII., is not much met with in the Scottish records.

Scots Justiciars and Special Lieutenants were appointed from time to time, with especial powers to deal with malefactors, fugitives and rebels, by the King, and not infrequently the King conducted his own justice eyre.

The reason for this was probably twofold, due in part to the jealousy of the King in regard to the great powers of such powerful chiefs as the Douglases, and in part also to the jealousy of the great nobles against each other.

On this subject Sir Walter Scott wrote thus in his Introduction to his *Border Antiquities*:—

'The Scottish Wardens do not appear to have held Warden-Courts, doubtless because the territorial jurisdictions of Sheriffdoms, Stewartries, Baillaries and so forth, which belonged to the great families by hereditary right, and the privileges of which they jealously watched, would have been narrowed by their doing so. Besides, the Scottish hereditary judges possessed the dangerous and inconvenient power of repledging, as their law terms it, that is, reclaiming any accused person from courts of co-ordinate jurisdiction, to try him by their feudal authority.'

The order of the Stewart-Court of Annandale is set forth in the Appendix of the *Leges Marchiarum*, from which we quote the first, fourth, and fifth items. 'In the first, it is thought meet for the Common-weel and more easie Reformations of Wrongs amongst the Subjects of the Realme, that ane of the Court Clerks of the said Stewartry sit in the Tolbuith of Lochmaban Ouklie [weekly], every Thursday, beginning at 8 hours in the morning, and remaining while 3 hours afternoon: accompanied with 2 or 3 Officers of the said Stewartry, for directing of Precepts upon Complaints, as follows.

'Item 4. That all Actions concerning Chancellarie, as serving of Brieves, Entire of Airs [entry of heirs],

Division of Lands, and other Pleys concerning Heritage, proceed, and be decyded, according to the Common Law, and Practicque of this Realme established by our most noble Princes of before.

'Item 5. It is appointed, that all criminal causes, sic as *Assisters with England, Resetters of them and their goods, Committers of murder, Fyre, Ravishing of Women, Stouth*, and sic like, to be committed be themselves, and before all others to be taken order with, be an famous and unsuspected assize, according to the ancient Laws of the Realme.'

The stewart is elsewhere styled baron, and it is evident that these courts of hereditary jurisdiction dealt with what was 'March Treason,' and in England would have been punished by the Wardens.

In 1445 it was ordained by the estates of Scotland that 'in time to come there should be no Wardanis on the Borders made in fee and heritage.'

Their judicial powers seem to have been specially limited by their commissions, and on one occasion in the sixteenth century, when greater powers than usual were granted by James VI. to Sir John Carmichael, Warden of the West March, sundry of the nobles protested, and some reduction was conceded to them.

The following is quoted from a commission of governorship and justiciary granted by Queen Mary in 1551 to Sir William Scot of Branxholm.

It ran 'within the bounds of the Lordship of Liddesdale and Teviotdalehead, and wherever the clans of Liddesdale may remain; with power to hold Courts at Branxholm and Hawick to do all things competent to his office therein; and to destroy utterly with fire and sword the dwellings of those malefactors who cannot be apprehended.'

Also, we may quote from the same volume[1]:—

'The Minutes of the Court of Justiciar of our Sovereign Lord the King held and begun in the Castle of Armitage, on Friday, 15th March 1537-1538 before Robert, Lord Maxwell, Justiciar of our Lord the King in that part, by his commission judicially shown and read, specially constituted: suits being called and the Court affirmed.' Lord Maxwell seems to have been the Warden of the West March as well as Keeper of Liddesdale, and yet the King's commission was necessary for him before he could hold his court.

At this court a dempster was sworn in, also two serjeants, and the business seems to have consisted in taking certain pledges of the Elliots to certain prisoners to take their trial in Edinburgh, and of sundry others for the keeping of the peace in Liddesdale.

The Royal Justiciars and Lieutenants of the Border,

[1] Armstrong, *History of Liddesdale*, Appendix li.

then, that we hear of in the Scots records were appointed by the King with a judicial rather than a military purpose: they would oversee both the Wardens and the Barons or Stewarts in respect of keeping order and the administration of justice.

These appointments become frequent in the latter half of the sixteenth century, and probably point to the increased disorder on the Marches.

Sometimes perhaps the appointment may have been a mark of royal or court favour, as in the case of the Lieutenancy of all the Marches conferred on the Earl of Bothwell in 1559, but usually, as we have already suggested, the office seems to be chiefly judicial.

In the year following Lord Ruthven is appointed Lieutenant and Justice over all the bounds of the Marches.

Sometimes the Scots Kings or Regents rode forth to 'do justice' upon their Border, the most famous case of all being that of King James v., who, as every Borderer knows, conducted a 'justice eyre' of the most rough and ready kind in person, and summarily hung on one particular circuit in 1530 Johnnie Armstrong of Gilnockie. In this last case, James seems to have been influenced by an unworthy jealousy of the splendour of his equipment and retinue, as both Pitscottie and the ballad intimate.

'But James, looking upon him sternly, said to his attendants, "What wants that knave that a king should have?" and ordered him to instant execution. Whereupon Armstrong "made great offers to the King. That he should sustain himself, with 40 gentlemen, ever ready at his service, on their own cost, without wronging any Scottishman: secondly, that there was not a subject in England, duke, earl, or baron, but, within a certain day, he should bring him to his Majesty, either quick or dead." At length, he seeing no hope of favour, said very proudly, "It is folly to seek grace at a graceless face: but," said he, "had I known this, I should have lived upon the Borders in despite of King Harry and you both: for I know King Harry would down weigh my best horse with gold, to know that I were condemned to die this day."'[1]

'John wore a girdle about his middle,
Imbroider'd ower wi' burning gold,
Bespangled wi' the same metal,
Maist beautiful was to behold.

There hang nine targats at Johnnie's hat
And ilk ane worth three hundred pound—
What wants that knave that a king should have,
But the sword of honour and the crown?'

Thus it was with Jethart justice that James v.

[1] Lyndsay of Pitscottie, *History*, p. 145.

quieted his own Border and 'made the rush bush keep the cow.' Queen Mary, again, held a justice eyre at Jedburgh, to which her Warden of the West and Middle Marches, the Earl of Bothwell, should have brought the evil-doers of his Wardenship had he not been dangerously wounded by 'John o' the Park.'

Even the unwarlike James VI. made an expedition against the thieves of the West Border in 1597. He thus wrote to Henry Leigh at Carlisle (Deputy-Warden of the English West March):—

'As some of the broken men and malefactors within this our West March have refused to enter and submit as directed by our Council, we have resolved to passe forward in proper person uppon them with fyre and sword upon Tysday next the xxii day of this instant to their exterminacion and wreike.'

CHAPTER XIV

THE 'PEACEFUL PERSUASION' AND TRANSPLANTING OF THE MARCHMEN BY JAMES VI. AND I.

With the union of the two crowns in the person of James VI. and I. the golden time of the Rank-rider of the Marches, the Border Freebooter, and the Moss-trooper came to an end. He was forced to 'purge himself and live cleanly,' for he could no longer play upon the mutual jealousies of the Wardens nor 'take assurance' from the opposite realm, but was punished for his misdeeds by Commissioners or by the Judges on their Assize. All hostile Acts of Parliament against each other's realm were deleted in 1607, and either country sought the common security; but it was only gradually that the Borders were quieted. Wanton destruction indeed such as had formerly been caused by the Wardens ceased, but 'doing a little shifting for their living' was still a profession amongst the marchmen, and the horse-stealer lingered on into the reign of George I., for we hear of a noted horse-thief, 'Luck-in-the-bag,' in connection with the rising of 'the '15.'

The profession, however, lost caste, and offenders

were hardly dealt with, being pursued by 'slough-dogs' (bloodhounds) through the sloughs, mosses and bogs, 'and thus in 1616 Sir Wilfrid Lawson and Sir Wm. Hutton, two of his Majesty's commissioners for the government of the middle shires of Great Britain, send salutations to John Musgrave the provost Marshall and the rest of his majesty's garrison (of Carlisle),' and order 'watches to be duly searched as was appointed and presentments to us or one of us to be made, of every fault, either in constables for their neglect in not setting it forth, or in any persons slipping or neglecting their duties therein; and that you likewise see that slough dogs be provided according to our former directions, and as this note to this warrant annexed particularly sets down.'

The first 'dogge' is to be kept beyond Esk, and other eight are also to be provided and their quarters named—'the Sheriff, officers, bailiffs and constables, within every circuit and compass wherein the slough dogs are appointed to be kept, are to take care for taxing the inhabitants towards the charge thereof, and collect the same, and for providing the slough dogs; and to inform the Commissioners if any refuse to pay their contributions, so as thereby such as refuse may be committed to the gaol till they pay the same.'[1]

[1] Burn and Nicholson, vol. i. p. 131.

Various commissions were appointed, composed of both English and Scots, whose 'condescendings' dealt with offenders of either country. Thus Englishmen refusing to staunch old feuds were to lie in Edinburgh, and Scottishmen in Newcastle. Armour and weapons in the unsettled districts in the Middle and West Marches were to be put away, and no horse, gelding or mare above the price of 50s. sterling or £30 Scots was to be kept—upon pain of death.

In the case of the Grahams or Grames, who lived beside Esk and Liddle in the English part of what had been till its division in 1552 the Debatable ground, a 'transplantation' of almost the entire 'name' was effected early in the new reign.

As the King proudly declares in his proclamation of the first year of his reign, December 1603, 'By the travel of his cousin, the Earl of Cumberland, his lieutenant there, with the assistance of other commissioners, things are brought to that point, that the offenders are all at our mercy, and do all (but specially the Grames) confess themselves to be no meet persons to live in those countries, and therefore have humbly besought us that they might be removed to some other parts, where with our gracious favour they hope to live to become new men, and to deserve our mercy: although we do confess, we have rather inclined to this course of mercy, as a thing more

agreeable to our nature, than the taking of so much blood as would be shed, if we should leave them to the just censure of the law.' Nevertheless His Majesty has to admit—concealing as best he may this hard fact under much verbiage—that there being 'a lack of means to provide presently for the transplantation of these Grames elsewhere, to the intent their lands may be inhabited by others of good and honest conversation: we have thought it not amiss, for better effecting thereof, and for ease of the prisons, to dismiss the vulgar sort of them: retaining their heads and principals for pledges, not only to be answerable for their forthcoming when they shall be called for, but for their good behaviour also in the mean season.'

Mr. Bell, the west Warden's clerk, gives in his MS. 'a note and abstract of the several names of the clans of all the Grames, severally given in to the right honourable Thos. Lord Scroope of Bolton, Lord Warden of the West Marches of England towards Scotland, preferred by them the eighth day of Oct. 1602; whom they severally bound themselves to be answerable for to the said Lord Scroope.' Commencing with the Goodman of Netherby, who answers for himself, sons, brothers, 'brether,' and tenants, and concluding with those that 'Will Grame, Goodman of Medop, his eames [uncles] sons, and friends will answer

for,' the number is four hundred and thirty-nine, and 'the tax assessed and received for transplantation of the Grames in the year 1606' is set down at £408, 19s. 9d., paid not by King James or Scotland, but by a rate upon the counties of Cumberland and Westmoreland. He gives the disbursements of the three 'goings over of the Grames into Ireland,' and it is abundantly evident from the meek manner in which these hardy Borderers submitted that in King James's 'Middle Shires' 'Othello's occupation was gone.'

The sword was not always beaten into the ploughshare, for the Border country remained largely pastoral; but the lance of the notorious 'Geordie Bourne' of the Marches became not infrequently the pick of 'Geordie Pitman,' who to this day exhibits the courage and hardihood that characterised his forefathers through the centuries of Border warfare till in his wisdom King James VI. and I. 'thought good to discontinue the divided name of England and Scotland out of his royal style, and resolved to take and assume the name and style of Great Britain.'

EPILOGUE

Not again could 'Bangtail,' 'Nebless (noseless) Clemy,' the 'Devil's chaft blade,' and 'Archie-fire-the-fells' labour scaithless in their vocation.

They had after 1603, as we have already seen, to forswear horse-flesh and 'live cleanly.' No more would they be able to run their day foray or prick their way by the light o' the moon—to 'ride out light and return heavy' with scores of nolt and sheep at the slight risk of some time or other of having to pay the fines of 'Double and Sawfey' at a Warden's meeting or Day of Truce.

'*Ave Caesar! Morituri te salutant.*'

For in 1605 the Border Commissioners agreed that for a shillingsworth of theft death was to be the penalty, and they set forth a short way with reivers in these words:—

'If any Englishman steal in Scotland, or any Scotsman steal in England, any goods or cattels amounting to the value of 12d., he shall be punished by death; and that all accessaries to such felonies, viz., outputting or resetting, shall likewise suffer death for the same.'

APPENDICES

I

'THE AULD ENEMY'

EDWARD I.'s policy of hatred had been only too successful: he had sown dragon's teeth, and had reaped the 'deadly feud' which was always ready to lift up its head on every occasion, for the memory of the 'Douglas Larder' on the one side or the cruelty of Cressingham and brutality of Hazlerigg on the other was ever kept fresh through the centuries by some fresh outrage on either side. Now to give the reader some notion of the absolute detestation of the English felt by the Scots even so late as the sixteenth century, it will suffice to quote from Monsieur Beague, a French gentleman who assisted the Scots in the 'campagnes' of 1548-9, who was an eye-witness of the barbarities then practised.

After the fight by Haddington he relates that 'the Scots throng'd to their camp, and beheld the naked and mangl'd bodies of the English stretch'd out upon the ground, with an air rather of resentment than pity; nay, some who no doubt had suffer'd most of their insulting enemy, had the cruelty to put out the eyes of the dead.'

And again, after the retaking of Ferniehirst Castle, near Jedburgh, 'others of the Scots tried their skill and contended who amongst them had the art to cut off the leg or the arm of an Englishman with greatest facility; and when thus they had made away with such as had fallen in their own

hands; they bought from the French; nor lost they any time in cheapening, but gave frankly whatever was ask'd, their very arms they parted with, for the pleasure of charming revenge. I remember, they purchased one of the prisoners from myself for a horse; they ty'd him neck and heels, laid him down in a place's field, run upon him with their lances, arm'd as they were, and on horseback, kris'd him, cut his body to pieces, and carried the divided parcels on the sharp end of their spears. I cannot much commend,' concludes Monsieur Beague, 'the Scots for this usage; we had not the same reasons to delight us doing ill to our enemy; but the truth is, the English had tyrannis'd over that part of Scotland in the most barbarous manner, and I do not find that 'twas any injustice to repay them, as the saying is, in their own coin.'

Certainly the Scots were bitter haters, and as certainly they had just cause for hate, since the English did their utmost to provoke and humble their proud neighbours.

You can read of the pleasure a Warden took in 'pricking the Scot' in this extract from a letter[1] written by Lord Dacre of the North (Lord Warden of the Marches from the first to the seventeenth year of Henry VIII.) to Henry VIII. in 1513 'at Harbotill the xiiith day of Novembre at vi of the clok in the morning.' He describes the great success of his 'Rode into Scotland by way of Gallespeth' (Gamblespath on Windy Gyle) in the Middle March, wherein his brother entering Scotland by 'Cressopbrige,' the west boundary of the march, had happily co-operated. He promises, moreover, 'in the next light' (full moon) to 'perform' another 'rode' into the West March, 'and in the meantime shall cause smaller Rodes be made, which shall be as gret annoyance to the Scots as a great Rode should be, and thus shall yo^r

[1] *Original Letters* (Ellis), XXXIV. vol. i. 1st series.

money be employed to the best I can, and for the greatest hurt and destruction of the Scotts; for I shall be as goode a husband thereof, as I would be of myn awn, and always I shall be redy to gif accompt of the same at your pleasure.'

Ruthless as Agamemnon, Henry VIII. himself commands Hertford to spare neither age nor sex in his campaign:—

> 'Μήτις ὑπερφυγεῖν αἰπὺν ὄλεθρον
> Χεῖρας τ' ἠμέρας—'

For the poorer people throughout these centuries life on the Border must have been an Inferno [1] from October unto March,[2] for at any time the 'red cock' might crow on the roof of their 'toon,' wife and daughters be ravished and murdered, the 'insight' and 'outsight' alike 'lifted' and carried off—four blackened walls being alone left to tell the tale.

Hearken to the Border widow's lament:—

> 'I sew'd his sheet, making my mane;
> I watch'd the corpse, myself alane;
> I watch'd his body, night and day;
> No living creature came that way.
>
> I took his body on my back,
> And whiles I gaed, and whiles I sat;
> I digg'd a grave, and laid him in,
> And happ'd him with the sod sae green.
>
> But think na ye my heart was sair,
> When I laid the moul' on his yellow hair;
> O think na ye my heart was wae
> When I turn'd about, away to gae?'

---

[1] Leslie, under date 1532, thus writes: 'Inglismen and Scotis, quhen betwene thame na apne weiris war zit proclamet, slewe, spoylet, stall, rugit, reivet, ilk from other, baith be say and land, cruellie.'

[2] During these months the marches were ordered to be set (see Chapter VIII.). The summer months usually afforded a welcome interlude for pastoral pursuits.

II

OF VARIOUS ENDEAVOURS TO 'STANCH THE FEUD'

This 'deadly feud' then—deliberately built up by Edward I. —continued like a never-dying beacon flame to call the English and the Scots to arms for over three hundred years, and was only staunched in 1603, when fate chose out the Scottish Solomon as the first recipient of the double crown. Various efforts to stay the flame or to 'stanch the feud' had, however, been made.

Edward I. himself had preferred originally pacific methods before warlike, but the twice unfortunate death of the 'Maid of Norway,' in 1290, had wrecked his project of her marriage with his eldest son, and with it the union of the two countries under one crown.

The voice of the lover was hushed; the trumpet sounded 'Boot and Saddle,' and it was with a sabre in his hand, and not with bridal offerings, that Edward henceforth wooed Scotland.

The Scots alliance with France was the result, and Scotland's favours were naturally given to France, not England. Statesmen perceived the need of the alliance, and some few sought for union, but till time had assuaged the bitterness that had become engrained such projects failed of accomplishment. Edward III., as we have seen, gave his daughter in marriage to the Scots Prince David, afterwards David II., but the ancient enmity was not thereby quenched.

When at war with France, Edward IV. proposed a marriage between his daughter Cecilia and the Scottish Prince, but no sooner had Edward come to terms with France than he

dropped treating with James III. for his son's hand and—the old national Adam rising within him—proclaimed James's revolted brother, Albany, to be *King of Scotland by the grace of the King of England.*

A few years later an indenture of matrimony was drawn up between Richard III. and James for the marriage of the Scots King's eldest son, James, to Anne, Richard's niece, the daughter of John, Duke of Suffolk.

Henry VII., after proposing to marry either his sister-in-law, or his cousin Katharine, granddaughter of the Duke of Somerset, to James IV., finally gave him his daughter Margaret, which, however, did not prevent James from rushing upon his ruin at Flodden in spite of the mutual 'grete tender Luve and Kindness'[1] previously alluded to and his own oath.[2]

The marriage of Edward VI. to Princess Mary of Scotland (the ill-fated Queen) was vehemently pressed both by Henry VIII. and the Protector, but the wooing was so rough

[1] The indenture of 1487 given in Rymer (arising out of the 'grete tender Luve and Kindness athie Prince has in sundri wise schewin unto uthir') proposes a marriage 'between the King of Scots and Queen Elizabeth late wife of King Edward the Ford, or between Prince James, the first begotton son of the seid king of Scottis, and ane of the seid Edward the Ford unquhile King of England Dochties, and sistir to the said Princes Elizabeth nowe queene of England quhilk likit best to baith the said kings.

'Be the quhilk Mariage or Mariagez, by the Grace of God to be completit, sall folowe the finall appeasing and cause of cesing of all sic Debaites and Controversies, as in time past has bene, for the Castell and Town of Berwick, betuix the Kings of the seid Realmes for the tyme being movit and attemptit, or the quhilk Castell and Town of Berwick, the said King of Scottis desires alwais Deliverans as the finale appeasing of the seid mariages or any of thame, be sic concorde as may be betuix Him and the seid King of Ingland.'

[2] James IV.'s oath, 1502:—

'I, James, by the Grace of Gode, King of Scotland, Promise, be thir Haly Evangelis and Canon of the Haly Mess be me Bodily touchit. Swere

that the national honour—pricked on also by the French influence—was aroused against it.

The following Convention, indeed, seems to have contemplated another Raid of Ruthven.

This Convention was signed by Norman Lesly, James Kirkcaldy of Grange, Henry Balnavis, David Monnypenny, and William Kirkcaldy, and was an agreement between them and the Protector Somerset and Edward VI.

'We cannot deny,' they say, 'but by all Reasone must confesse, that unlesse our sad Sovereign Lady de delyvered into the Hands of the Kingis majeste that now is, to be Brough up and educated togithirs by his sade Uncle and otheris of the Privy Counsall, the sad marriage notwithstanding any Promesse that have or can be, is never likele to take effecte, whereby the occasione nowe sent by God evidentlie for the Determination of a perpetual Peax, Unite, and hartie naturale Love betwene both the Realmes being pretermitted, the semblabe is never like to enswe hereafter, and so shall both Statis their Realmes and Subjectis continue, to the Displeasure of Almighty God, the Destruction of themselves and their Countres, to the eternal Condemnation of the Workers of the same, in Hetered, Rancour, Malice and Vengeance the one against the other.'

This 'Hetered, Rancour, Malice and Vengeance' were yet continually and thoughtfully fed by either side to the very end, for Henry VII. uses the phrase *In dominio nostro*

that I sall for my parte wele and trewly kepe and observe the Trete of Perpetuale Peax and Amitie, and every Article of the same, now lately passit and concludit be sufficient Auctorite, and in the Names of Us, the said King on that Ane Partie, and the Rt Excellent the Right Hie and Mighty Prince Henry, be the Grace of God, King of Ingland and of France and Lord of Irland on that other Partie, bering Date the xxiv Day of the moneth of January last past, and the same als fer ais in me is I sall cause in likewise to be Observid and Kept my Subgiectis.'

Scotiae, and Mary Queen of Scots on her marriage with the Dauphin assumed the arms of England.

Yet it is difficult for Englishmen nowadays, who as a rule are singularly ignorant of Scots history, to realise how distinct from, and foreign to England, Scotland was in olden days, and these two extracts from indentures of 1492 and 1497 may give some additional notion of this political estrangement. (Rymer's *Foedera.*)

Thus in the Ratificatio Conventionum Scotiae of 1492—a five years' truce and abstinence from war between the Kings of England and Scotland—it is stipulated that 'the Confederate Kings' are to join in should they wish to do so and signify the same within six months; if by then they do not do so, and if the Kings of England and Scotland do not wish the Confederate Kings to be included, then the truce is of no force or meaning. These kings are 'pro parte Regis Scotorum, Karolus Rex Franciae, Johannes Rex Daciae, Rex Hispaniae, Rex Neapoli, Austriae et Medioleni Duces,' and 'pro parte Regis Angliae, Imperator, Rex-Romanorum, Reges Hispaniae, Portugaliae, Neapoli, Austriae, Burgundiae, Ferrarii et Sabaudiae Duces.'

Again, in 1497 the circumstance and the cause of the violation, breakage and dissolution of the last truce is committed to the arbitration, judgment and final determination of the King and Queen of Spain.

A fresh truce between the two Kings of England and Scotland is to last from sunrising of 30th September to sunset 30th September 1504—the Apostolic Prothonotary Petrus Ayala being brought in as arbitrator, 'pro bono Pacis, tanquam media Persona, interfuit illustris Dominus Petrus Ayala Prothenotarius Apostolicus ac Illustrissimorum Principum Regis et Reginae Hispaniorum orator.'

III

THE BISHOPRIC OF DURHAM, OR THE PALATINATE, AND THE DUTY OF BORDER DEFENCE

The Bishop of Durham seems occasionally to have been appointed Warden in commission with others, but in consequence of his royal prerogative in the Bishopric he had oftentimes to take the field against the Scots in person in early times, for he was regarded as 'a brazen bulwark against Scotland.' [1] Bishop Bek, for example, who is said 'to have loved war for its own sake,' in 1298, 'carried through the siege of the Castle of Dirlton in Scotland, and seems to have had the whole conduct of the war in behalf of the King.'

The King *requests* the Bishop to send his men; he does not *command* him to do so, but in course of time 'in military matters the privileges of the Palatinate were never allowed to interfere with the complete freedom of action on the part of the authorities of the Marches; and, further, the Bishops always accepted this arrangement without question: undoubtedly, indeed, they were glad of any assistance in their arduous task of defending the Borders, even though obtained at the cost of some infringement of their liberties.'

Finally, it appears that the Bishop of Durham, in Elizabeth's reign, 'was responsible to the Wardens of the Marches for any assistance they might require, or that he might be able to give.'

[1] See Lapsley, *County Palatine of Durham.* (Longmans.)

IV

ARMOUR AND WEAPONS OF THE MARCHMEN

THE 'Border Spear' seems usually to have been contented with but little furniture for himself or nag. As one who enters for a Point-to-Point nowadays, he rode as light as possible, for in case of 'Hot Trod' he might have to trust to the swiftness of his horse for safety. A jack[1] (leathern jacket strengthened with iron plates), steel cap, and spear were the usual equipment of the yeomen class. Spear or lance or Jethart staff or halbert seem to have been in use indifferently, though the two last would perhaps have been more useful for footmen when fighting against horsemen, as more likely to bring the rider to the ground.

As the late Mr. Bain pointed out in his Introduction to the *Calendar of Border Papers*, vol. i., the commission of inquiries of Queen Elizabeth on the Western Border gives not only the arms and weapons, but also notes their absence.

'The jack, steel cap, and spear predominate next the Scottish Border, the bow and bill in the districts further south, and there are not above half-a-dozen guns or arquebuses: while two men were ready to face the enemy, one with a pitchfork and the other with a pikestaff.'

In 1605 the Border Commissioners on the West, appointed by King James for the ordering of his 'Middle Shires,' agree in regard to armour, weapons, and horses as follows:—

'That proclamation shall be made, that all inhabiting within Tindale and Riddsdale in Northumberland, Bewcastle dale, Wilgavey, the north part of Gilsland, Esk, and

[1] The jack seems to be applied indifferently to the brigandine, gambeson, scalecoat, and lorica.

Leven in Cumberland, east and west Tevidale, Eskdale, Ewsdale and Annandale in Scotland (saving noblemen and gentlemen, unsuspected of felony or theft, and not being of broken clans) and their household servants, dwelling within those several places before visited, shall put away all armour and weapons, as well offensive as defensive, as jacks, spears, lances, swords, daggers, steelcaps, hagbuts, pistols, plate sleeves, and such like; and shall not keep any horse, gelding or mare, above the price of 50s. sterling, or 30l. Scots.: upon like pain of imprisonment.'

V

'DOUBLE AND SAWFEY'

THE damage or loss seems to have been assessed by a jury of twelve, six of whom were to be 'gentlemen of Worship and good name of Scotland,' chosen by the English Warden, and the other six 'like gentlemen of England,' to be named by the Scots Warden. Then this assessment was doubled, and a third—'in respect of such charges as the partie offended had sustained in the inquearinge and findinge certainlye who was the offendor'—finally added. This was the famous *double and sawfey*—or 'two doubles,' in reality a threefold—fine, which is so commonly met with in old Border histories and nearly always wrongly explained. Even in Mr. Heslop's excellent *Dictionary of Northumberland Words* 'sawfey money' is said to be 'blackmail levied by the reivers of Tynedale and Redesdale.'

The *English Dialect Dictionary* lends its high authority to the like error, for it defines 'sawfey money' as 'blackmail levied by Border Raiders.'

Again, Jamieson's *Scottish Dictionary*, under the heading

of 'Saughie,' gives this explanation, 'The sum given in name of salvage; an old term used in the Border laws.'

This would seem to imply a derivation from safety, as though 'sawfey' signified safety money.

Now the three terms Principal, *Double and Sawfey* are succinctly set down and explained under the 'manner of holding days of Truce' as follows (*Calendar of Border Papers*, vol. ii. p. 724):—

'Principall' is given as the 'true single quantity of a bill.'

'Doubles' another single quantity.

'Sawffies' a third single quantity.

Every one filed or convicted of a bill for stolen goods is condemned to pay three for one (with exceptions), viz. principall, double and sawffie.

Whatever the derivation, the meaning is more particularly set down by Sir Robert Bowes in his report on the Border in 1551. He has some difficulty in spelling the term: it is now the 'double and *falss*' and again the 'double and *sale*,' and finally the 'double and *falsse*,' but he knows quite well what it means. 'Ye principall goods sold or spoyled to be redressed or the value thereof with the double, which was as muche againe as the principall amounted unto, and for the fals' ('sawfey'), 'or in respect of such charges as the partie offended had sustained in the inquearinge and findinge certainlye who was the offendor all other tyme, the value of the gooddes which in the whole amounted to a threefold restitution.' He goes on to say that 'by remisse and negligente directions made by officers upon the Borders, the same good orders were perverted to the favor and profyte of the thiefe, losse and damage of trew men' by only ordering the 'double' to be paid. Wherefore the Commissioners order that after the first day of May 1551 'for all attemptets donne and committed or to be committed after the said day

of the first meetings of the said Commissioners hereafter, duringe ye peace redresse should be made with double and falsse yt ys to say *in triplum* or three times as muche as the principall amountethe unto accompted en the principall (if yt may be had) to discharge one third part thereof.' In the indenture of 1553 it is stated that this 'redress by payment of the principal with two doubles' not having estopped thieves and evil-doers they shall for the third fault incur the pain of death as common offenders against the laws of the marches.

The 'double and sawfey' was also the mulct for 'any tymbre or woodd fellen, taken and caryed away by the inhabitants of either realme furthe of the opposite realme—to be esteamed and assessed by the othe of the partie offended or his servante keeper of the said woodd.'

'BAUGHLING' OR REPROVING AT A DAY OF TRUCE

This was not, as stated in a footnote in the *Leges Marchiarum*, a 'scolding or wrangling' between two Borderers, but a public accusation of faithless dealing and broken word. A licence had to be obtained for this from both Wardens. This 'Baughling,' however, having been found to give 'great occasion of further trouble and inconvenience,' it was laid down in the indenture of 1553 'that no person or persons of either the said realms, shall, at any day of Trewes, or other Convention or assemblies between the officers of both the said realms, bear, shew or declare any sign or token of reproof.'

In order, however, that justice might be done in the matter, it was enacted in the indenture of 1563 'that where any person of either realm shall complain upon the subjects of the other realm, dwelling within any of the Wardenries thereof, that he will not, according to his bond and promise,

re-enter as lawful prisoner either for himself, or any other that he standeth bound for, or will not pay his ransome promised, and other such like matter and causes, that the person complainant shall give in his bill to the warden of the marche where the person complained upon dwelleth: and the warden shall cause him to be lawfully arrested, to answer the next day of Trewe, and to do justice upon the complaint, in giving of sentence according to the marches equity and reason.'

The ways of spelling the word are many and various. A 'reproche or baughle,' Sir Robert Bowes styles it. A 'baughling (brawling) or reproving,' wrote Sir Walter Scott in his Introduction to *Border Antiquities*. It is written as Baugle in the Border Laws, and as Bawchling in *Calendar of Border Papers*.

The true word seems to be Bauchle, the meaning of which, as given in Jamieson's *Scottish Dictionary*, is to treat contemptuously, to vilify: as to bauchle a lass, to jilt a young woman, or to put out of shape, as *e.g.* to *bauchle* shoon.

'Bawchling,' says the memorandum (*Calendar of Border Papers*, vol. ii. p. 724) on the 'manner of holding days of Truce,' 'is a publicke reproffe, or rather ane appeall, by holding a gloave (representing the false hand of the person bawchled) on a speares pointe, at a day of truce or other assemblye of English and Scottes, whereby the partie bawchled is accused or challendged for breaking his word, faith or bond: and sometimes the speare and glove are by the accuser fixed on the house-topp of the person accused: but this is very punishable by the treaties, yf it be done without the princes or the wardens license.'

Sir Robert Bowes in his *Informacions* gives the following interesting description of the said 'baughling.' 'And because the manner and order of such reproche or baughill is

not knowne to everye man I thoughte good here to describe ye same thus:—

'If any Englishe man or Scottsman be bound to another of the opposite realme, for ransome, entrie of prisoners, or any other juste cause, for the which he bindethe him by his faithe and truthe, and doth not accordinglie performe and accomplishe the same, after reasonable monitions thereof given to the partie, and request to performe the said bonde and promise, It hath been used between the realmes, that the partie offended would beare a glove, or a picture of him that had so broken his truthe, and by the blast of a horne or crye to give knowledge to the whole assemblie, that such a person is an untrue and unfaithful man of his promise to his reproche, which is as much in the lawe of armes as to give unto him the lye, and appeale to fight with him in the quarrell.

'And indeed the partie so reproched may (if he will) defend his cause and truthe by singular battaile, which the other partie can not honestly refuse.'

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